SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1949.

No.

UNITED MINE WORKERS OF AMERICA
and
UNITED MINE WORKERS OF AMERICA, DISTRICT 19,
Petitioners,

v.

OSBORNE MINING COMPANY, INC.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Sixth Circuit.

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OSBORNE MINING COMPANY, INC.

PETITION FOR WRIT OF CERTIORARI
To the United States Court of Appeals for the Sixth Circuit.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioners, United Mine Workers of America and United Mine Workers of America, District 19 (herein called UMW and District 19), pray that a writ of certiorari issue to review the judgment (A. 117)[1] of the United States Court of Appeals for the Sixth Circuit[2] entered in this case on June 7, 1960, wherein said Court affirmed the

[1] Abbreviation "A" refers to the Appendix to this Petition.

[2] The United States Court of Appeals for the Sixth Circuit will be referred to herein as either the "Court of Appeals" or "Sixth Circuit."

judgment of the United States District Court for the Eastern District of Tennessee, Northern Division,[3] entered February 9, 1959. The judgment in the District Court made an award to Osborne Mining Company, Inc., against the petitioners in the sum of Two Hundred Fifteen Thousand Dollars ($215,000.00), with costs, the award consisting of One Hundred Sixty Five Thousand Dollars ($165,000.00) as compensatory damages and Fifty Thousand Dollars ($50,000.00) as punitive damages (A. 93; R. IV 1767).[4]

A certified appendix record in said case, together with the proceedings in the Sixth Circuit, is furnished herewith in accordance with this Court's rules.

OPINION BELOW.

The opinion of the Court of Appeals appears in the Appendix hereto at page 95 et seq.; in the certified record (Certified Record Volume) and it is reported in ... F. 2d ... (Adv. Op. .... 1960).

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[3] The United States District Court for the Eastern District of Tennessee, Northern Division, is referred to herein as the "District Court."

[4] The abbreviation "R" refers to the printed, certified record of the Sixth Circuit filed in the Supreme Court of the United States. The Roman numeral following the abbreviation "R" indicates the volume of the record in which the page reference may be found. The certified record consists of seven volumes. Volumes I through IV consist of the printed appendix to the briefs of the petitioners on their appeal to the Court of Appeals. Two unnumbered volumes constitute the printed appendix of Osborne Mining Company, Inc. on its appeal. One of the volumes constitutes Osborne's main brief, with an appendix following the brief. The other volume is entitled "Appendix to Briefs on Behalf of Plaintiffs-Appellants." Because these volumes are unnumbered reference thereto is preceded by the prefix, "OMC." The seventh volume is entitled "Certified Record on Petition for Writ of Certiorari," which volume contains the proceedings in the United States Court of Appeals for the Sixth Circuit. Reference thereto is preceded by the prefix "CR."

JURISDICTION.

The judgment of the Court of Appeals which affirmed the judgment rendered by the District Court was entered June 7, 1960 (A. 117). The jurisdiction of this Court to review by writ of certiorari the judgment of said Court of Appeals is invoked under the provisions of 28 U. S. C., Sections 1254 (1) and 2101 (e).

BASIS FOR FEDERAL JURISDICTION IN THE UNITED STATES DISTRICT COURT.

The basis for jurisdiction in the District Court was the Labor Management Relations Act, 1947, 29 U. S. C., Section 141 et seq., and particularly Sections 187 (a) (1) and (2) and 187 (b)[3] of said Act.

QUESTIONS PRESENTED.

1. Where an employer held the exclusive right to mine coal from certain lands and undertook to mine coal therefrom by strip mining operations on its own part and by underground mining on the part of its "sublessees" of small tracts of the employer's lands, the coal from both strip and underground operations being hauled to the employer's preparation and loading yard by trucks with drivers engaged by the employer or the sublessees on a "contract" basis, and where the sublessees and truckers were economically integrated with and subservient to the employer, may the employer's contention that a labor union induced a federally condemned secondary boycott be sustained on the theory that the sublessees and their employees and the truckers were "other" or "neutral" employers, or the employees thereof, under Section 303 of the Act (29 U. S. C., Sec. 187)?

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[3] The Labor Management Relations Act, 1947, will be referred to herein as the "Taft-Hartley Act" or as the "Act."

2. In an action against a labor union for damages claimed to have resulted from a labor dispute, wherein jurisdiction of the District Court was invoked under Section 303 of the Act (29 U. S. C., Section 187), and wherein the employer contended that certain actions which occurred during the dispute constituted violations of said Section 303 on the part of a labor union and that the entire dispute and the course of conduct of the labor union relative thereto constituted an unlawful interference with the employer's business under the common law of Tennessee, did the District Court have jurisdiction to determine liability under the common law or non-federal cause of action?

3. In an action against a labor union for damages claimed to have been sustained in a labor dispute, may liability of the union be predicated under Section 303 of the Taft-Hartley Act or under the common law of Tennessee, on acts not shown to have been the acts of an agent of the union or on acts committed by persons unknown, which the Court found were "inspired" by union activities?

STATUTES INVOLVED.

The statutory provisions involved are Section 303, Labor-Management Relations Act, 1947 [29 U. S. C. 187, 61 Stat. 158 (a) (1) and (2)][6], and Section 6 of the Norris-LaGuardia Act (29 U. S. C. 106, 47 Stat. 71). These statutory provisions are set forth in Appendix IV hereto.

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[6] This reference is to Section 303 of the Labor-Management Relations Act, 1947, prior to amendment thereof by Section 704 (c) of the Labor-Management Reporting and Disclosure Act of 1959 (Pub. L. 86-257, title VII, Sec. 704 (c), 73 Stat. 545, 29 U. S. C. Sec. 187). All references to "Section 303" of the Act, except where otherwise indicated are to the Act prior to the 1959 amendment.

STATEMENT OF THE CASE.

1. Kind of Action and the Judgment.

Osborne Mining Company filed this action in the District Court charging that the UMW and District 19 had violated Section 303 of the Labor-Management Relations Act, 1947, and also the common law of Tennessee, in their efforts to organize Osborne Mining Company's employees in 1954 and 1955 (OMC 36-48).[7] The UMW and District 19 moved to dismiss the complaint on several grounds, including the grounds that the complaint failed to state a cause of action under Section 303 and that the Court was without jurisdiction of the common law cause of action, but this motion was overruled (OMC 33-35). Defenses made by the UMW and District 19 denied the complaint's material allegations and asserted the defenses indicated in the questions here presented (OMC 48-53).

The case was tried before the District Judge without a jury. Findings of Fact and Conclusions of Law were filed directing entry of judgment for Osborne Mining Company for compensatory damages in the amount of $165,000.00 and for punitive damages in the amount of $50,000.00 (A. 87, 92). This judgment was affirmed by the Court of Appeals (A. 117).[8]

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[7] This reference is to the printed appendix filed on the Osborne appeal. *See* footnote 4

[8] The Osborne case was tried together with a case which resulted from the same facts, *Loyce and Amos Coal Company v. United Mine Workers of America et al.*, Civil No. 3167, U. S. District Court, Eastern District of Tennessee, Northern Division. The *Loyce and Amos* case resulted in a judgment for the plaintiff in the amount of $35,000.00 (R. IV 1765). Upon appeal the judgment of the District Court was set aside with instructions to the District Court to dismiss the complaint for lack of jurisdiction (A. 116-117).

2. **The Material Facts, the Issues and the Decision of the Courts Below.**

Osborne Mining Company (herein sometimes referred to as Osborne) acquired the right to mine coal from two tracts of land located in Whitley County, Kentucky (Finding 16, A. 52).[9] It undertook, from July, 1954, through October, 1956, to mine coal from these lands by two methods; that is, by contour strip mining, which was carried on through Osborne's regular employees, and by a number of small underground mines which Osborne subleased to others and in which work was performed by the sublessees and persons employed by the sublessees (Findings 7, 25 and 36; A. 48, 55, 60). All or virtually all of the coal produced at the strip and underground mines was hauled to the Osborne preparation and loading yard in nearby Jellico, Tennessee, by trucks hired by Osborne or the sublessees on a contract basis (Finding 38, A. 61). Osborne contemplated the fulfillment of its contractual obligations for the sale of coal to the Tennessee Valley Authority and others from the combined production of the strip and underground mining operations (Finding 25, A. 55; R. I 43-44).

The Court of Appeals found that UMW and District 19 induced the sublessees and their employees and the truckers "to engage in a concerted refusal to mine and haul coal, the objective being to force Osborne to bargain with UMW as the representative of its employees" (A. 103).

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[9] The District Court's Findings of Fact consist of 124 findings, which are set forth in Appendix I hereto; these are also found in the Osborne appendix, beginning at 60a.

(a) **The factual basis for the determination that the sublessee mine operators and the truck owners were neutral or secondary employers under Section 303.**

Petitioners contend that because of the complete interdependence and integration of the operations of Osborne, the sublessee mine operators and the truckers, and because of the position of economic dominance occupied by Osborne, neither the sublessee mine operators nor the truckers were "neutral" or "secondary" employers, and therefore that inducement of them and of their employees to concerted action was not violative of the Act's Section 303. This contention was denied in both courts below. The District Court and the Court of Appeals reasoned that under the definition of the word "employee", as revised in the Taft-Hartley Act, 29 U. S. C., Section 152 (3),[10] the sublessee mine operators and the truckers were not Osborne employees, but were independent contractors; and, a fortiori, they were "neutral" or "secondary" employers (A. 105-106).

The evidence and the findings of the District Court regarding the sublessee mine operators and the truckers are summarized in the following paragraphs.

The sublessee mines were operated on small tracts approximately 300 feet in width along a seam of coal exposed by the Osborne contour strip mining (Finding 36, A. 60; R. I 283-287; R. II 680). Openings were driven into the coal and into an abandoned conventional type underground mine. The mining carried on was by the sublessee and about four or five men in a primitive manner. Equipment used therein ordinarily consisted of wooden or steel rails, wooden ties, hand operated drills, and mine cars pushed by hand or occasionally pulled by mule (Findings 40, 41; A. 62).

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[10] This provision of the Act is set forth in Appendix IV to this petition.

The tracts were sublet by written instruments, terminable on 30 days notice, requiring sublessee to diligently operate the mine, keep accurate records, comply with applicable law and hold Osborne harmless. The agreement expressly contemplated the employment of employees by the sublessee. The agreement contained no provision for the distribution of the coal to be mined thereunder but it was the understanding and practice of the sublessees that such coal was to be trucked to Osborne's tipple where it would be purchased by Osborne (Findings 37, 38; A. 61).

Osborne paid about $2.90 per ton of coal delivered in Jellico. Delivery costs and other expenses left about $1.50 per ton for division among the sublessee and his employees (Findings 38, 39; A. 61-62; R. IV 1809). No accurate records are available to show the average production of these mines, but public records pertaining to such mines in the area establish an average production of 3.9 tons per man per day (Finding 42, A. 62; R. III 1585). The District Court found that earnings of workers in these mines were "not much more than living wages and in some instances hardly as much as living wages" (Finding 40, A. 62).

Coal hauled from the small mines operated by the sublessees to the Osborne loading yard was ordinarily hauled by truck drivers who owned their own trucks. They were engaged and paid by the sublessees on the basis of a stipulated amount per ton (R. I 522).

Coal strip mined by Osborne was trucked to Osborne's Jellico loading yard by drivers who owned their own trucks, though in some instances truck owners who did this hauling owned more than one truck and would hire drivers for the additional trucks (R. I 378, 571). Drivers owning trucks were paid on a tonnage basis (which was determined by the distance from the tipple to the mining operation) out of which they paid their own expenses for

fuel, repairs and the like. Drivers who drove trucks owned by other truck drivers were paid on a trip basis by the owner (R. I 351, 579).[11] Osborne did not have written agreements with the truckers, who were engaged on an indefinite basis (R. I 364). The drivers' work consisted simply of driving the trucks from five to ten miles back and forth from the strip mine to the loading yard, and was of necessity regulated by the day-to-day requirements of the operation (R. I 396, 477, 579).

A significant indicant of the relationship of Osborne, the sublessees and the truckers is found in their joint maintenance of the haul roads in the mountain area wherein Osborne and the sublessees mined coal. These roads were covered, from time to time, with slate loaded into trucks by Osborne mining employees, was delivered to the road by the truckers and was spread on the road by the sublessees and their helpers. No additional compensation was received by the truckers or the sublessees and their helpers for this work (R. I 393-396, 478-479, 517, 601; R. III 1442-1443).

The Court of Appeals, as previously stated, regarded the status of the sublessees and the truckers to Osborne as one of independent contractor and as determinative of whether the inducement to concerted action on the part of the sublessees and the truckers and their employees was violative of Section 303. It did not comment extensively on the relationship existing between them, merely noting that "there was no common ownership between Osborne and the sublessee mine operators and the truck owners, and that Osborne did not control them or their

[11] The closeness of the relationship of Osborne and the truckers is indicated by the fact that many of the truck drivers, including many of the so-called independent truck owners, received a Christmas check from Osborne in the same manner and amount as the Christmas bonus paid by Osborne to its mining employees (R. II 1224; R. III 1661-1663).

employees" (A. 98). The Court of Appeals also noted that under the National Labor Relations Act's definition of "employee", prior to Taft-Hartley revision,[12] both the sublessee miners and the truckers would have been regarded as Osborne employees (A. 105).[13] However, the Court did not consider whether despite Taft-Hartley revision, the sublessee miners and the truckers were non-neutral employers under Section 303.

(b) The determination that the District Court had jurisdiction of the common law or non-federal cause of action.

Petitioners contended below that because there was no diversity of citizenship the District Court was without

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[12] 49 Stat. 450 (3).

[13] The Court of Appeals cited in this connection *Matter of A. V. Greene*, 49 N. L. R. B. 146, a decision made under the National Labor Relations Act prior to the 1947 Taft-Hartley revision. In the *Greene* case it appeared that District 50 sought to be certified as representative of a group of miners and truckers operating under circumstances strikingly comparable to those of the sublessees and truckers in the instant case. In holding, after a full recital of the facts, that the miners (including the sublessees themselves) and the truckers were employees of the lessee who as Osborne herein purchased the coal produced, and in directing an election, the Board said:

> "In effect, the Company argues that it has nothing to do with the mining of the coal at the Mines except to receive and sell the coal which is extracted. However, if these Lessees were 'independent contractors,' we would have a whole battalion of contractors working for the same employer at the place of business and furnishing him with a personnel without which he could not operate. The Company exercises all the control over the miners and haulers that is required for the purpose of its business and the protection of its property interests. The Lessees, other miners, and haulers, constitute a labor force which extracts the coal and conveys it to the Tipple from whence it is shipped. The Board's policy has been to include within the coverage of the Act workers or wage earners who e livelihood depends on a continuing association with an enterprise, and we have been guided by the factual character of the relationship rather than by the surface arrangements of lessor, lessee, or 'independent contract' . . .

jurisdiction to determine the common law cause of action. The District Court rejected this contention. It held that the common law cause of action had been established and awarded damages, both compensatory and punitive, thereunder. The theory of the District Court, subsequently approved by the Court of Appeals, was that the material facts which supported the claim of secondary boycott under Section 303 also supported the common law cause of action and that the federal and non-federal claims were not separate causes of action but were merely different grounds of a single cause of action. Reasoning thusly, and citing **United Mine Workers of America v. Meadow Creek Coal Company**, 263 F. 2d 52 (6th Cir. 1959), cert. denied 359 U. S. 1013 (1959), the Courts below found that the doctrine of ancillary or pendent jurisdiction enunciated in **Hurn v. Oursler**, 289 U. S. 238 (1933), was applicable and accordingly that a basis for the exercise of jurisdiction over the common law cause of action existed (A. 106).

Essentially, the facts as found are that by various forms of inducement directed to Osborne's employees and others, including acts of violence and threats of violence, the UMW and District 19 interfered with Osborne's business by causing the curtailment of the strip mining operations of Osborne and the underground mining operations of the sublessee operators who sold coal to Osborne; and by causing an interruption of the trucking of coal from the Osborne and the sublessee mines to the Osborne tipple.

The facts pertaining to the inducement are fully set forth in the District Court's Findings of Fact, particularly Findings 27 through 86 (A. 56-76), and are adequately summarized in the opinion of the Court of Appeals (A. 95). For the purpose of the question here posed regarding the jurisdiction of the District Court to determine liability under the Tennessee common law we deem it unnecessary to restate these facts in this petition in any detail. We note,

however, that the acts found to be tortious were catalogued by the District Court as "primary" where such acts, as found, were "directly against Osborne Mining Company's own officials and employees" (Finding 110, A. 83) and "secondary" where the acts were found to be intended "to induce or persuade the secondary employees," i. e., the sublessees and their employees and the truckers (Finding 112, A. 84).

The District Court also found that the acts complained of were designed "to induce the closing down of the non-union mines and the concerted stopping of mining and hauling of coal from those operations" (Finding 60, A. 68); and that the acts "caused all of them (primary and secondary employees) to stop working for a period of several days" (Finding 61, A. 69).

The acts referred to generally in the above quotations from the Findings of Fact specifically relate to warnings given to Osborne mining employees while at work at the strip mine (Finding 27, A. 56); interference by threats with the unloading of trucks at the Jellico tipple (Finding 28, A. 56); the issuance of warrants for the arrest of drivers under circumstances indicating there was no basis therefor (Finding 29, A. 58); the assault of a trucker delivering coal to the Osborne tipple (Finding 48, A. 64); the assault of non-union operators in the area, which though unconnected with Osborne and the sublessee operators, was found to have caused fear in the minds of the Osborne employees and the sublessees (Findings 49-51, A. 64-65); the gathering of large groups of union men on the streets of Jellico (Finding 59, A. 68); the scattering of nails on the haul roads (Finding 63, A. 69); the firing of shots into the stripping pits where Osborne's men were at work (Finding 72, A. 72); and the burning of haystacks near the stripping operation and the display of mysterious lights in the woods nearby (Finding 73, A. 73).

The Court of Appeals found that the acts "were so interrelated that except in a very few instances it would be virtually impossible to separate those directed against a primary as distinguished from a secondary party." And continuing, the Court further said that "the primary activities could certainly not be regarded as an efficient intervening cause which would operate to relieve the defendants of responsibility for the full damage caused by their violation of federal law" (A. 106).

(c) The factual basis for the determination that the UMW and District 19 were responsible for certain acts which occurred.

As indicated in the preceding section of this petition, a number of acts occurred which were held to have been violative of Section 303 of the Act and of the common law of Tennessee. Many of these acts were attributed to the UMW and District 19 in the absence of evidence relating them to agents of the petitioners or, in several instances, to members of the petitioners. We refer specifically to the matters set forth in the following paragraphs.

In July of 1954 a number of warrants were served on drivers hauling coal to the Osborne tipple charging them with operating with improper equipment and resulting in their arrest. Upon hearing, the charges were dismissed. These warrants were served by a deputy sheriff who was a UMW member and a retired coal miner. The District Court held that the swearing out of the warrants constituted a "serious abuse of legal process" and that the issuance thereof was "inspired by union **activities**," although there was no evidence of union inducement and even though union inducement was denied by the deputy sheriff (Finding 29, A. 58, R. III, 1645-1653). This conclusion was affirmed by the Court of Appeals (A. 100).

Finding of Fact 63 (A. 69), kindred in approach, is as follows:

"During April, 1955 and for months thereafter, there were repeated instances in which large numbers of nails were found on the roads used by the trucks hauling the Osborne coal and which roads were also used by miners going to the underground mines and the strip pits as they went to and from work. The scattering of nails on the road was inspired by **union activities** of the International and its members." (Emphasis supplied.)

There is no evidence in the record identifying any individual as being responsible for the acts referred to in this finding. The Court of Appeals nevertheless affirmed the District Court's action in predicating liability of the petitioners thereon (A. 103).

Findings of Fact 72 and 73 (A. 72-73) are also similar:

"(72) On July 14, 1955, at approximately 11:00 p. m. while the night shift of the stripping crew was operating, rifle shots began to rain down among the men. The stripping operation was lighted by lights on the shovels. The shots came from the darkness across a ravine. Approximately 100 rounds of ammunition were fired into the pit. The cabs of the shovels were struck by a number of bullets which came within a few feet of the men operating the shovels. One man was hit by a bullet.

"(73) In the following months of the fall of 1955 and in the spring of 1956, there were other efforts to intimidate the truck drivers and the stripping crews. These included the burning of haystacks in close proximity of the property being stripped at night in plain sight of the stripping crew; the shooting at a lone guard at the stripping pits; the displaying of mysterious lights in the woods around the pits, and scattering of nails in the road."

None of these acts are connected in the record with any evidence relating them to the union or, indeed, to any individual or group of individuals. The Court of Appeals, without comment on the absence of connecting evidence, expressly based, in part, its affirmance of the District Court's judgment on these acts (A. 104, 107-108).

REASONS FOR GRANTING THE WRIT.

I.

In an action by an employer against a labor union for damages under the Act's Section 303, the Court of Appeals has erroneously limited itself to the technical meaning of the legal term "independent contractor" in holding that one employer is a "neutral" with regard to a dispute of another employer without consideration for or regard to the economic circumstances relating and joining the two employers. The Court of Appeals has thus decided an important Federal question involving the scope of condemnation of the secondary boycott provisions of said Section 303 and has decided such question in a manner totally discordant with Congressional intent in the enactment of said statute and in conflict with the decision of the Court of Appeals for the District of Columbia in **Local 24, International Brotherhood of Teamsters, v. N. L. R. B.**, 265 F. 2d 675 (1959).

In its holding that the sublessee mine operators and the contract truckers were "other" employers under Section 303, and at the same time finding that their relationship to Osborne Mining Company was so immediate that, under the Wagner Act, the sublessees, as well as their employees and the truckers, would have been regarded as Osborne employees, the Court of Appeals ignored the explicit intention of Congress in enacting Section 303. While Congress was there "concerned with reshaping labor manage-

ment legal relations," **International Longshoremen's Union v. Juneau Spruce Corp.**, 342 U. S. 237; 241, advocates of stature made it clear that the shield of Section 303 was intended to protect employers "wholly unconcerned"[14] in a particular dispute and not an employer "acting as a part of the primary employer."[15]

These statements of Congressional intent were made with regard to situations far less striking than the situation here under consideration, for here the sublessees and their employees and the truckers were as much a vital part of Osborne's plan for the mining and marketing of coal from his property as was any laborer or shovel operator in Osborne's immediate employ. Moreover, they were as dependent upon Osborne as was any Osborne employee, as elemental economic considerations plainly indicate. Curiously, as we think, the Sixth Circuit, while it gave no meaning to these facts, gave recognition to them, by its citation of **Matter of A. M. Greene**, 49 N. L. R. B. 146, wherein the Board found (p. 149) under identical facts that the dominant company exercised "all the control over the miners and haulers that is required for the purpose

[14] During the debate on Section 303 Senator Taft explained that the provision "makes it unlawful to resort to a secondary boycott to injure the business of a third person *who is wholly unconcerned* in the disagreement between the employer and his employees." (93 Cong. Rec. 4323; emphasis ours.)

[15] Senator Taft was questioned as to the application of the provision in a situation where a dress manufacturer has his cut goods sent to contractors whose workers sew and complete the dresses according to the manufacturer's specifications, with the dresses then returned to the manufacturer for sale. Senator Taft reasoned that the provision would have no application. He said (93 Cong. Rec. 4200):

> "Mr. President, the secondary boycott ban is merely intended to prevent a union from injuring a third person who is not involved in any way in the dispute or strike, and, therefore, should not suffer economic damage simply because of the action of a labor union. It is not intended to apply to a case where the third party is, *in effect in cahoots with or acting as a part of the primary employer.*" (Emphasis ours.)

of its business and the protection of its property interests."

Petitioners recognize fully that the 1947 amendments to the National Labor Relations Act narrowed the definition of the term "employee" as it was construed in the **Greene** case and later by this Court in **N. L. R. B. v. Hearst Publications, Inc.**, 322 U. S. 111 (1944), and it is likely that by reason of the revision, the National Labor Relations Board would not now direct an election in which the sublessees and their employees and the truckers would be found eligible to vote as employees of Osborne. See **Matter of Whaley Coal Company**, 124 N. L. R. B. No. 156 (1959). Statements of Senator Taft (See footnotes 14 and 15 on page 16) that an employer acting "as a part of the primary employer" is not a neutral employer under Section 303 reflect clearly that Congressional revision above noted was not intended to be determinative of a secondary boycott situation of the kind present in the instant situation. That this is true is further emphasized by the holding of the District of Columbia Circuit in **Local 24, International Brotherhood of Teamsters v. N. L. R. B.**, 266 F. 2d 675, discussed below.

Surely, if ever one employer is acting as a part of another employer (and not merely as a supplier or transporter for another employer in a normal business sense) that situation may be found in the relationship of the sublessee miners and the contract truckers to Osborne.

The problems created by twilight relationships are numerous but not new and have manifested themselves in law in many ways. See Jacobs, **Are "Independent Contractors" Really Independent?** 3 De Paul L. Rev. 23 (1953). These problems are of great importance not only to the coal industry but to industry generally. Early cases often involved the equivalent of today's workmen's compensation laws. In **Lehigh Valley Coal Co. v. Yen-**

savage, 218 F. 547 (2nd Cir., 1914) Judge Learned Hand found that such a statute protected a coal miner not unlike the sublessees here, saying (p. 552):

> ". . . He is himself as dependent upon the conditions of his employment as the company fixes them as are his helpers. By him alone is carried on the company's only business; he is their 'hand' if any one is. Because of the method of his pay one should not class him as though he came to do adjunctive work, not the business of the company, something whose conduct and management they had not undertaken. Such statutes * * * should be construed, not as theoreums of Euclid, but with some imagination of the purposes which lie behind them."

Legislation of the 1930's gave impetus to the problem observed in the **Yensavage** case, for legal history records many instances where employers destroyed the employment relationship to escape the obligation of collective bargaining, unemployment compensation, social security taxes, and minimum wage requirements. A notable illustration is found in **Angelos v. Meswich**, 289 N. Y. 498 (1943). In that case an employer, one week after a union began picketing, had his six employees sign articles of partnership and thus, because no employment relationship and hence no "labor dispute" existed, the employer was found entitled to an injunction. [Reversed on other grounds sub nom. **Cafeteria Employees Union v. Angelos**, 320 U. S. 293 (1943)]. Other illustrations are seen in **Bakery and Pastry Drivers v. Wohl**, 315 U. S. 769 (1942), wherein the right to picket a merchant utilizing independent peddlers was upheld despite the absence of a "labor dispute" which resulted from the conclusion that the peddlers were independent contractors; in **United States v. Silk**, 331 U. S. 704 (1947), wherein this Court dealt with questions arising concerning the applicability of the Social Security Act; and in the **Walling, Adm. v. Woodbine**

Coal Company case, 64 F. Supp. 82 (E. D. Ky., 1945), wherein coal miners comparable to those here involved were found entitled to recovery under the Fair Labor Standards Act against the lessor company which purchased the coal and operated the tipple.[16]

It is unnecessary to speculate on the reason which prompted Osborne Mining Company to elect to do business through persons held by the Court of Appeals to be engaged technically as independent contractors rather than through regular employees. Suffice it to say that Osborne, as many of the employers involved in the cases cited above, did so operate and in so doing welded together employees, sublessees and truckers alike to establish a **straight line** process for the production of coal.

The Court of Appeals for the District of Columbia in the very recent case of **Local 24, International Brotherhood of Teamsters v. N. L. R. B.**, 266 F. 2d 675 (1959), which involved a situation comparable to that here, gave full recognition to the view we insist is correct. In denying enforcement of the Board's order and in holding that the problem cannot be reached "by the use of any legalistic word or phrase, such as 'co-employer,' or 'independent contractor,' or even 'ally,'" the Court there ruled that truckers operating for a transportation company but as the employees of independent truck owners were not employees of a neutral employer.[17] Significantly, the Court

[16] The Wage and Hour Division of the U. S. Department of Labor investigated the Osborne Mining Company, Inc., operations under the Walsh-Healy Public Contracts Act and the Fair Labor Standards Act and found that certain employees in the sublessee mines had not been paid in accordance with the former act. Osborne Mining Company, Inc. made payment of the back pay found due (R. IV 17-9, 17-10).

[17] The *Teamsters* case here cited involved a charge of violation of Section 8 (b) (4) of the National Labor Relations Act. The section is couched in the same language as Section 303 and makes an unfair labor practice that which is actionable under Section 303

approved the following language of the trial examiner who had been reversed by the Board (page 680):

> "Rather, the Respondents (our petitioners) say, the businesses of the Lessors and ACE are so integrated operationally that for purposes of this proceeding they must be deemed either a single employer, a joint or common venture, a 'straight line' operation within the Board's understanding of that term, or an alliance of interest. The Respondents maintain that whichever term may best be used to describe the relationship among ACE and the Lessors, their business arrangements are such that in the Union's dispute with the Lessors or any one of them neither ACE nor any of the Lessors is so unconcerned therewith that it is statutorily shielded as a neutral from an extension of the dispute by the Union to its operations, and, therefore, the Union's picketing and inducement herein occurred at premises which in this proceeding should be regarded as primary and not secondary."

This decision is in total conflict with the decision here under consideration. The Sixth Circuit undertook to distinguish the instant case from the decision in the **Teamsters** case by finding (A. 105-106) that the "strands of control referred to in the **Teamsters** case were not present, and the evidence supports the findings of the trial judge as to the existence of the independent contractor relationship." The distinction made by the Sixth Circuit is not logical, however, and the error which the Court committed is at once apparent when its citation of **Matter of A. M. Greene**, 49 N. L. R. B. 146, is recalled. The difference between the decision in the case at bar and the decision in the **Teamsters** case is one of concept. The Sixth Circuit held that the question turned on a determination of the status of independent contractor; the Court of Appeals for

the District of Columbia, with appreciation of the purpose of the statute, hold that it did not.

It is evident, from the foregoing that the Court of Appeals has given effect to an important federal statute in a manner totally inconsistent with Congressional intention, that its action is in conflict with the guiding principles expressed in a comparable decision by the Court of Appeals for the District of Columbia, and that its decision presents an important federal question in the administration of the Act, which has not been, but should be, settled by this Court.

II.

The conclusion of the Court of Appeals that the District Court had jurisdiction of the non-federal common law claim which was joined with the claim under the Act's Section 303 on the theory that the two claims were supported largely by the same facts and that the two claims were merely different grounds of a single cause of action, presents an important federal question in the field of labor law with regard to the application of the doctrine of ancillary or pendent jurisdiction. The determination of this question by the Court of Appeals is in conflict with Congressional intent in the enactment of Section 303 and it is in conflict with the decision of the Fourth Circuit in **United Mine Workers of America v. Patton**, 211 F. 2d 742 (4th Cir., 1954). The question has not been, but should be, settled by this Court.

The case at bar is the second case in which the Sixth Circuit has applied the doctrine of ancillary jurisdiction where jurisdiction of the District Court has been invoked under Section 303. In the first case, as well as in the present case, the Sixth Circuit affirmed a most substantial judgment for compensatory and punitive damages based on state law. **United Mine Workers of America v.**

Meadow Creek Coal Company, 263 F. 2d 52 (6th Cir., 1959), cert. denied 359 U. S. 1013 (1959).

The importance of the question hardly can be overstated. Since final determination of the **Meadow Creek** case, and since the decision of the District Court was announced in this case, some twenty-five suits have been filed and are presently pending against the UMW in the federal courts of Tennessee, Kentucky and Virginia, all on the Meadow Creek-Osborne Mining Company jurisdictional pattern. These twenty-five suits involve claims totalling over $24,000,000.00, more than $11,000,000.00 of which is asserted for punitive damages.[18]

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[18] *White Oak Coal Corp., Inc.* and *Arnold Coal Company v. UMWA*, Civil No. 4028, E. D. Tenn., Northern Div., Filed March 2, 1959. Claim: $1,850,000.00 compensatory; $750,000.00 punitive. *William G. Gilchrist, Jr. et al. d/b/a Gilchrist & Sons and G. & G. Coal Co. v. UMWA*, Civil No. 3866, E. D. Tenn., Northern Div. Filed June 22, 1959. Claim: $1,700,000.00 compensatory; $1,100,000.00 punitive. *Snyder & Randolph, Inc. v. UMWA*, Civil No. 3867, E. D. Tenn., Northern Div., Filed June 22, 1959. Claim: $1,000,000.00 compensatory; $500,000.00 punitive. *C. M. Murray and W. H. Murray, d/b/a Mary Ann Coal Company v. UMWA*, Civil No. ..... W. D. Va., Filed April 7, 1960. Claim: $150,000.00 compensatory and punitive. *Elaine Coal Company, Co-Dee Coal Company, and Amanda Coal Company v. UMWA*, Civil No. 555, E. D. Ky., Pikeville, Filed June 23, 1959. Claim: $361,000.00 compensatory; $350,000.00 punitive. *Camp Fork Coal Company v. UMWA*, Civil No. 556, E. D. Ky., Pikeville, Filed June 23, 1959. Claim: $50,000.00 compensatory; $50,000.00 punitive. *Gem Elkhorn Coal Co. and K. & F. Coal Co. v. UMWA*, Civil No. 557, E. D. Ky., Pikeville, Filed June 23, 1959. Claim: $330,000.00 compensatory; $330,000.00 punitive. *Blackey Gem Coal Company v. UMWA*, Civil No. 558, E. D. Ky., Pikeville, Filed June 23, 1959. Claim: $55,200.00 compensatory; $50,000.00 punitive. *E. P. Price, C. H. Kelly and Wallace Fields, Partners d/b/a Elkhorn Coal Company v. UMWA*, Civil No. 559, E. D. Ky., Pikeville, Filed June 23, 1959. Claim: $1,008,000.00 compensatory, $1,000,000.00 punitive. *Isom Coal Company, Inc. v. UMWA*, Civil No. 563, E. D. Ky., Pikeville, Filed July 28, 1959. Claim: $10,000.00 compensatory; $212,000.00 punitive. *Adams Coals, Inc. v. UMWA*, Civil No. 507, E. D. Ky., Pikeville, Filed August 4, 1959. Claim: $115,000.00 compensatory; $100,000.00 punitive. *Adams Brothers Coal Co. v. UMWA*, Civil No. 508, E. D. Ky., Pikeville, Filed August 4, 1959. Claim: $35,000.00 compensatory

Indeed, even while this petition was being written, the District Court for the Eastern District of Tennessee, Northern Division, has rendered judgment against the UMW in two of these cases, tried together, for a total of $479,000,00, of which $119,000,00 is for punitive damages:[19]

$35,000,00 punitive; *Cane Creek Fuel Company, Inc. v. UMW*, Civil No. 560, E. D. Ky., Pikeville, Filed August 4, 1950. Claim: $28,000,00, compensatory; $28,000,00 punitive; *Little Shepherd Coal Co. v. UMW*, Civil No. 570, E. D. Ky., Pikeville, Filed August 4, 1950. Claim: $88,000,00 compensatory; $88,000,00 punitive; *Elk Coal Co. and No. 4 Coal Co. v. Same*, Civil No. 571, E. D. Ky., Pikeville, Filed August 4, 1950. Claim: $5,000,00 compensatory; $5,000,00 punitive; *Eagle Block and Jack H. Block v. Same*, Civil No. 572, E. D. Ky., Pikeville, Filed August 12, 1950. Claim: $[illegible] compensatory; *Neal D. Lucas, Marcella B. Kelly, Sr., Ben Estes, Ben Estes, Jr., and Sue Bradshaw, Partners d/b/a Lucas Coal Co. v. UMW*, Civil No. 575, E. D. Ky., Pikeville, Filed August 17, 1950. Claim: $154,000,00 compensatory; $[illegible] punitive; *Elk Coal Co. v. Same*, Civil No. 585, E. D. Ky., Pikeville, Filed October 6, 1950. Claim: $213,000,00 compensatory; $75,000,00 punitive; *Smith, Hall and Gilbert Coal Co. v. UMW*, Civil No. 284, E. D. Ky., Jackson, Filed December 1950. Claim: $[illegible] compensatory; $[illegible] punitive; *Kentucky Coal Company, Inc. v. UMW*, Civil No. 286, E. D. Ky., Jackson, Filed October 23, 1950. Claim: $[illegible] compensatory; $[illegible] punitive; *Lucas Coal Co. v. UMW*, Civil No. [illegible], E. D. Ky., Jackson, Filed August 4, 1950. Claim: $[illegible] compensatory; $[illegible] punitive; *Nicholas Coal Co. v. UMW*, Civil No. 296, E. D. Ky., Jackson, Filed August 4, 1950. Claim: $[illegible] compensatory; $[illegible] punitive; *Island Creek Coal Company, Inc. v. UMW*, Civil No. 297, E. D. Ky., Jackson, Filed August 17, 1950. Claim: $[illegible] compensatory; $720,000,00 punitive; *United Fuel Co., Isaac Kincaid, Cora Clements, Edna K. Cook, Mary Lucas, Henry Kelly, and Sue Bradshaw, Partners d/b/a the Mingo Coal Company v. UMW*, Civil No. 298, E. D. Ky., Jackson, Filed August 17, 1950. Claim: $87,000,00 compensatory; $174,000,00 punitive; *Independent Mining Company, Inc. v. UMW*, Civil No. 299, E. D. Ky., Jackson, Filed August 17, 1950. Claim: $[illegible] compensatory; $1,300,000,00 punitive.

[19] *William L. Gilchrist, Inc. et al. v. United Mine Workers of America*, Civil No. 3866, E. D. Tenn., August 28, 1950; *Sanders and Randolph, Ltd. v. United Mine Workers of America*, Civil No. 3867, E. D. Tenn., August 3, 1950.

and a jury, in another of these cases being tried in the District Court for the Eastern District of Kentucky, has returned a verdict for $104,845.00, of which $50,000.00 is for punitive damages.[20]

The importance of the question is further seen in the fact that the staggering amounts of **punitive damages** awarded and claimed in these cases **could not be recovered under federal law.** Section 303 (b) provides only that a litigant "shall recover the damages by him sustained and the cost of the suit." This provision, so far as we are aware, has never been construed to permit the recovery of punitive damages; to the contrary, in an opinion written by the late Judge Parker it was held, **United Mine Workers of America v. Patton,** 211 F. 2d 742 (1954), that punitive damages cannot be recovered in an action under Section 303.

Practical considerations demonstrate that under the doctrine followed in the instant case, Section 303 is not important in a substantive way. However, it has effectively become a procedural devise for entry into federal court.

Congress did not intend Section 303 to be a device by which damage suits against labor organizations based on local law could be maintained in the federal courts. Legislative history manifests that Congress intended precisely the opposite that such suits were not to be maintained in the federal courts. This history shows that bills originally prepared and passed in the House would have vested in federal district courts jurisdiction to try damage actions based on virtually every conceivable form of interference arising in a labor dispute.[21] Congress, however, rejected

[20] *Elane Coal Company, et al. v. United Mine Workers of America*, Civil No. 555, E. D. Ky., July, 1960.

[21] Legislative History of the Labor Management Relations Act, 1947, Vol. I, pp. 158, 204. Section 12 of H. R. 3020, as passed by the House, is copied as Appendix III hereto.

this mode of regulation and adopted the far more narrow Section 303. Under this provision, as this Court stated in **Local 1976, United Brotherhood of Carpenters v. NLRB**, 357 U. S. 93 (1958), at page 99, a primary employer "with whom the union is principally at odds, has no absolute assurance that he will be free from the consequences" of union activity "by means other than those proscribed" in Section 303. The Sixth Circuit's decision in the present case renders meaningless the limited jurisdiction granted by Congress.

This Court's teaching in the **Carpenter** case is that Congress carved certain activities out of the total area of industrial conflict by condemning, in Section 303, "specific union conduct directed to specific objectives." The test of liability is whether there has been unlawful inducement and encouragement for a prohibited objective and, as stated, in **NLRB v. International Rice Milling Co.**, 341 U. S. 655, 672, "the violence . . . is not material"; and, while the element of violence may be used as a factor in showing that a union has committed an act prohibited by Section 303, it may not serve as a medium for the allowance of punitive damages which both legislative history and decisional law declare are not allowable under Section 303.

But if, as shown, Section 303 is permitted to serve as a procedural device under the doctrine of ancillary jurisdiction, then, once in court, the element of violence is used to show a non-federal, state common-law claim for interference with a plaintiff's business and used as a predicate for a punitive damage award, the purpose of Congress not to vest in federal courts the power to punish unions by punitive damage awards is completely thwarted. In **General Committee v. Missouri K. T. R. Co.**, 320 U. S. 323, 332, 333, quoted in **Amazon Cotton Mill Co. v. Textile Workers Union**, 167 F. 2d 183, 186, this Court, dealing with jurisdiction of federal courts in the labor relations field, said:

> "Congress has been highly selective in its use of legal machinery. . . . The inference is strong that Congress intended to go no further in its use of the processes of adjudication and litigation than the express provisions of the Act indicate."

If, as the Court of Appeals in the instant case has mandated, a state common-law action is permitted to be tried as pendent to an alleged violation of Section 303, then not only is the element of violence highlighted but serves as a vehicle for the award of punitive damages. Thus does pendent jurisdiction inflict in an action under Section 303, punishment against a labor union, contrary to Congressional intendment.

Petitioner does not here insist that an action under state law may not be maintained against a labor organization for conduct marked by violence and imminent threats to public order. **United Automobile Workers v. Russell**, 356 U. S. 634 (1958); **United Construction Workers v. Laburnum Corp.**, 347 U. S. 656 (1954); **San Diego Building Trades Council v. Garmon**, 359 U. S. 236 (1959). We do insist that such conduct, as it may or may not relate to the common law tort of interference, was not intended by Congress to be the concern of the federal judiciary in the absence of an independent basis for federal jurisdiction.

In litigation involving other federally-created causes of action with regard to which organized labor has been most emphatically concerned, this view has prevailed. In **Apex Hosiery Co. v. Leader**, 310 U. S. 469 (1940), an action based upon the Sherman Act which involved a strike marked by extreme public disorder, this Court rejected the contention that the federal courts had jurisdiction to determine the cause under state law. It said (p. 483):

> "It is not denied, and we assume for present purposes, that respondents . . . violated the civil and

penal laws of Pennsylvania which authorize the recovery of full compensation and impose criminal penalties for the wrongs done. **But in this suit, in which no diversity of citizenship of the parties is alleged or shown, the federal courts are without authority to enforce state laws. Their only jurisdiction is to vindicate such federal right as Congress has conferred on petitioner by the Sherman Act and violence, as will appear hereafter, however reprehensible, does not give the federal courts jurisdiction.**" (Emphasis ours.)

And in concluding its decision in the **Apex** case this Court made the following significant statement (p. 513):

> "If, without such effects on the market, we were to hold that a local factory strike, stopping production and shipment of its product interstate, violates the Sherman law, practically every strike in modern industry would be brought within the jurisdiction of the federal courts, under the Sherman Act, to remedy local law violations. The Act was plainly not intended to reach such a result, its language does not require it, and the course of our decisions precludes it. **The maintenance in our federal system of a proper distribution between state and national governments of police authority and of remedies private and public for public wrongs is of far-reaching importance. An intention to disturb the balance is not lightly to be imputed to Congress** . . ." (Emphasis ours.)

So, too, in **Hunt v. Crumboch**, 325 U. S. 821 (1945), an action against a labor organization wherein plaintiff relied upon acts alleged to be violative of the Sherman Act identical to those which would have been considered under Pennsylvania's common law, this Court stated that (p. 826) "whether the respondent's conduct amounts to an

actionable wrong subjecting them to liability for damages under Pennsylvania law is not our concern."

The Sixth Circuit, by its application of the doctrine of ancillary jurisdiction in the present case, rejected the reasoning of this Court in the **Apex** and **Crumboch** cases. At the same time and in the same opinion, however, it expressed reliance on **Apex** and **Crumboch** in dismissing the companion claim of Love and Amos Coal Company. The Sixth Circuit found that Love and Amos, because it did not have employees who were involved in the dispute (A. 116), "never had and could not assert any federally recognized cause of action or ground for recovery," and hence held that the District Court was without jurisdiction to determine the Love and Amos common law claim.

The difference in the result reached by the Sixth Circuit in the **Osborne** case and the **Love and Amos** case finds no support whatever in the **Apex** and **Crumboch** opinions. Those cases are positive that, absent diversity of citizenship, federal courts have jurisdiction to vindicate only such federal right as Congress has created. The present case and the **Meadow Creek** case establish that where a "substantial" question is raised under the Taft-Hartley Act, jurisdiction is present to dispose of a common law cause of action growing out of the same and attendant facts.

The conclusion reached by the Sixth Circuit not only conflicts with the clear analogy to be drawn from the **Apex** and **Crumboch** cases; it conflicts completely with the Fourth Circuit's decision in **United Mine Workers of America v. Patton**, 211 F. (2d) 742 (1954).[22]

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[22] The decision in the present case is also in conflict with the Sixth Circuit's decision in *Allen v. Barr*, 192 F. (2d) 150 (6th Cir. 1952). There in a suit for a patent infringement it was charged also that the defendant had infringed plaintiff's trade mark and had

In the **Patton** case where damages were considered under Section 303 and on the basis of common-law interference, the District Court approved a verdict against the union for compensatory and punitive damages. The District Court there expressly found, 114 F. Supp. 596, that punitive damages could be recovered against the union in that case inasmuch as the evidence established a common-law cause of action under the law of the Commonwealth of Virginia, which law permitted an award of punitive damages.

On appeal the Fourth Circuit, rejecting Patton's claim that **Hurn v. Oursler** was applicable,[28] reversed the District Court on the question of whether the District Court had jurisdiction to adjudicate the case under the laws of Virginia so as to award punitive damages. The Court of Appeals said (211 F. 2d 742, 749):

> "While we think that there was sufficient evidence to take the case to the jury on the question of actual damages, we think there was error in allowing the jury to award punitive damages. This is not a case brought under the diver ity jurisdiction of the federal courts to enforce a common-law liability, where we are governed by state decisions and would be bound on

engaged in unfair competition relating to the patent device and the trade mark; but because the trade mark infringement concerned a common law trade mark and there was an absence of diversity of citizenship, the Court of Appeals held the District Court to be without jurisdiction.

[28] In the *Patton* case, plaintiffs asserted in their *Patton* brief in the Fourth Circuit (p. 34) that "The evidence is such to establish not only secondary boycott as made unlawful by the Taft-Hartley law but also the common law tort of interference with the contract right . . . In such a case where the federal question, to-wit, the secondary boycott under the Taft-Hartley Act, is not plainly wanting in substance, the federal court, . . . may nevertheless retain and dispose of the case upon the non-federal ground", citing the *Hurn* case. This contention appears to be in *United Mine Workers of America v. Patton*, supra, as reported in 47 A. L. R. 2d 850, 855.

> the question of punitive damages by the decision of the Supreme Court of Appeals of Virginia in United Construction Workers v. Laburnum Const. Corp., supra, 194 Va. 872, 75 S. E. 2d 694. There is no diversity of citizenship and the plaintiffs are entitled to invoke the jurisdiction of the federal courts only because they sue on a cause of action created by a federal statute, i. e., on the cause of action created by section 303 (b) of the Labor Management Relations Act, 29 U. S. C. A., Sec. 187 (b), heretofore quoted. That section makes no provision for the recovery of punitive damages; but, on the contrary, provides expressly that the aggrieved party 'shall recover the damages by him sustained. . . .'"

On the basis of the **Patton** decision petitioners submit that there is a definite conflict of authority among the Circuits on this question. Because of this conflict and because of the manifest importance of the question of the application of the doctrine of ancillary jurisdiction to cases of this sort, under which doctrine virtually all labor disputes allegedly offensive to state common law may be brought within Federal jurisdiction, this question should be settled by this Court.

III.

The Courts of Appeals expressly approved the District Court's finding that a number of acts, though they were not shown to have been committed by an agent of the UMW or indeed by a UMW member or any particular individual, had been "inspired by union activities," and therefore were the responsibility of the UMW. Petitioners submit that this predicate for liability is in conflict with previous pronouncements of this Court in **U. S. v. White**, 322 U. S. 694 (1944), and in United Mine Workers of America v. Coronado Coal Company, 259 U. S. 344, and in Coronado Coal Company v. United Mine Workers of America, 268 U. S. 295, and of the Court of Appeals for the District

of Columbia, in **International Ladies Garment Workers Union v. N. L. R. B.**, 237 F. 2d 545 (1956). It is also in conflict with congressional intent with regard to an action under either Section 303 or under the common law. The standard of responsibility thus followed manifests the Court of Appeals' commission of error prejudicial to the UMW and sustains the necessity for the granting of certiorari herein.

The factual basis for the question here raised is set forth in that part of the "Statement of the Case" beginning at page 12 of this Petition, and we do not re-state such factual matters here. Suffice it to note that among the acts made the responsibility of the UMW is the firing of shots into the stripping pits where Osborne's men were at work by persons unknown (Finding of Fact 72, A. 72). The prejudice which naturally flows from such a finding is apparent.

A number of years ago the Third Circuit in **Republic Steel Corp. v. N. L. R. B.**, 107 F. 2d 472 (3rd Cir., 1939), made the following apt observation:

> "We think it must be conceded, however, that some disorder is unfortunately quite usual in any extensive or long drawn out strike. A strike is essentially a battle waged with economic weapons. Engaged in it are human beings whose feelings are stirred to the depths. Rising passions call forth hot words. Hot words lead to blows on the picket line. The transformation from economic to physical combat by those engaged in the contest is difficult to prevent even when cool heads direct the fight. Violence of this nature, however much it is to be regretted, must have been in the contemplation of the Congress when it provided in Sec. 13 of the Act, 29 U. S. C. A., Sec. 163, that nothing therein should be construed so as to interfere with or impede or diminish in any way the right to

strike. If this were not so the rights afforded to employees by the Act would be indeed illusory."

This language is in point here for, notwithstanding judicial recognition of the fact that disorder is apt to occur during a prolonged dispute, the essence of the Sixth Circuit's opinion is to the effect that the UMW, having been involved in a dispute in which certain disorders occurred, was necessarily responsible for other disorders, including acts of an entirely different and more reprehensible character. May such a thesis be sustained?

It is difficult to couch discussion of this problem in the ordinary language of agency for it is to be observed that with respect to the findings complained of there is no evidence which would establish that any particular individual, UMW member or otherwise, was the actor. It must be assumed however that by the deliberate use of the words "inspired by union activity" the District Court and the Court of Appeals are to be understood as saying that other members of the UMW or sympathizers with the UMW cause were the perpetrators of these acts. As such, the Sixth Circuit's reasoning is surely discordant with judicial pronouncements and congressional intent.

This Court made a most positive distinction between labor unions and union membership in **U. S. v. White**, 322 U. S. 694 (1944). It is there said (p. 702) that "actions of one individual member no more bind the Union than they bind another individual member unless there is proof that the Union authorized or ratified the acts in question". This rule was not changed by the Taft-Hartley Act. During debate on the question of agency during consideration of the Act, Senator Taft stated that ". . . I do not think there is anything in the fact that a union is an unincorporated association which would bring about a condition in law that the act of every member is necessarily charged

to the labor organization" (Legislative History of the Labor Management Relations Act, 1947, p. 1026). Again, Senator Taft declared that "the fact that a man was a member of a labor union in my opinion would be no evidence whatever to show that he was an agent" (Ibid. pp. 1204-5).

The language of this Court in the **White** case and the explanations of Senator Taft are reflected in the case of **International Ladies Garment Workers Union v. N. L. R. B.**, 237 F. 2d 545 (C. A. D. C., 1956). In that case the Court reviewed an order of the Board which denied reinstatement to strikers who had continued picketing during a violent strike and did not "repudiate" or denounce such violence which was "committed on their behalf". The Court set aside the Board's order holding that the responsibility of an individual employee for the acts of a fellow striker who is not his agent is no greater than and the same as the vicarious responsibility of a union for wrongful acts of an individual member. In denying that an individual member ratified violence which occurred during a strike by continuing to participate in the strike, the Court of Appeals said:

> "Nor can a conclusion of 'ratification' rest on the 'strikers' failure to disassociate themselves from misconduct by 'admonishment, denunciation, or public pronouncement'. Aside from the question whether these terms suggest a meaningful course of conduct that the strikers may have elected, we think they were under no obligation to disavow misconduct which they did not initiate and with which they are not shown to have been connected, directly or indirectly. United Mine Workers of America v. Coronado Coal Co., 1922, 259 U. S. 344, 395, 42 S. Ct. 570, 66 L. Ed. 975. And their silence provides no rational basis for inferring that they acquiesced in the wrongs

of others with whom no agency relationship is shown. United Electrical Workers v. National Labor Relations Board, 1955, 96 U. S. App. D. C. 46, 51, 223 F. 2d 338, 343, makes clear that such a relationship is an essential prerequisite to the inference which the Board seeks to draw from the strikers' silence."

The concept of responsibility expressed in the **Garment Workers** case is at complete variance with the reasoning of the District Court and the Court of Appeals. To attribute responsibility to a union for what its activities may have "inspired" strikes, as we think, at the roots of equal justice under law and admits almost of no limitation. The essence of the Sixth Circuit's approach is to raise suspicion to the status of fact and to base inferences upon mere speculation in a manner heretofore properly condemned. **N. L. R. B. v. Columbian Enameling & Stamping Co.**, 306 U. S. 292, 300 (1939); **N. L. R. B. v. Sun Shipbuilding & Dry Dock Company**, 135 F. 2d 15, 31 (3rd Cir. 1943).

Though the instant case was tried to the District Court without a jury, a frightening aspect of the Sixth Circuit's language lies in the reflection of what a jury might do with a charge based thereon. No one would deny, and history establishes, that unions often are met with hostile juries. Would anyone doubt how such a jury would resolve an issue of fact involving a union if it had only to determine whether that union's activities "inspired" another to the act in question? If the test of agency required by the Taft-Hartley Act is to be supplanted by, or measured by, a test of what the union has not directed, and indeed may not want, but may have "inspired", can anyone doubt the importance of the Sixth Circuit's language in the administration of the Act?

If, as we think, the Sixth Circuit's concept of agency is in conflict with the Taft-Hartley Act, it is perhaps even

in greater conflict with the standard of responsibility that Court was required to observe in its consideration of the common law cause of action. If ancillary jurisdiction permitted the adjudication of the non-federal cause of action —which petitioners deny— it must be noted that Section 6 of the Norris-LaGuardia Act, (29 U. S. C. 106)[24] makes applicable thereto a more strict standard of responsibility than obtains in an action under the Taft-Hartley Act. Section 6 directs that no labor organization shall be responsible "in any court of the United States" except upon such proof as is set forth in the section quoted below, hence its applicability in the common law phase of the instant case cannot be doubted.

This Court gave full recognition to the purpose of Section 6 in **United Brotherhood of Carpenters and Joiners v. U. S.**, 330 U. S. 395 (1947), for there in discussing the "authorization" of a member, agent, or officer which would make his acts the responsibility of the union, it is said (pp. 406-407) that "the requirement of 'authorization' restricts" the liability for such officers' or members' unlawful acts, "although such officers or members are acting within the scope of their general authority" to associations "who actually participate in the unlawful acts, except upon clear proof that the particular act charged, or acts generally of that type . . . had been expressly authorized, or necessarily followed from a granted authority . . . or was subsequently ratified . . . after actual knowledge of its occurrence."

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[24] Section 6 reads thus:

"No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof."

In 1947 Congress sought to negate the recognition given to Section 6 in the **Carpenters** case by defining the term "agent" so as to reinstate the application the common law principles of agency. Yet Congress reinstated that test only insofar as it authorized actions at law (and unfair labor practices not here involved), which is to say only for the purposes of Section 301, 29 U. S. C. 185, providing for actions on breach of contract, and Section 303. The rule of Norris-LaGuardia was not otherwise modified. The Second Circuit has noted that while Congress "expressly lifted the bar of the Norris-LaGuardia Act"[25] in certain sections of the Act specifically designated therein,[26] it rejected the contention that the Norris-LaGuardia provisions had been impliedly repealed.

There is in this case, as previously noted, no evidence identifying the perpetrators of the acts in question. In this situation, in so far as those acts constitute a part of the common law interference found by the Court of Appeals, there is manifested neither the "clear proof" of actual participation in, or actual authorization of, by the union of the wrongful conduct attributed to it, nor is there "clear proof" of ratification thereof by the defendant after actual knowledge of the wrongful conduct con-

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[25] *A. H. Bull Steamship Co. v. Seafarers' International Un.* (C. A. 2), 250 F. 2d 326. While the *Bull* case dealt with Norris-LaGuardia's Section 4 (29 U. S. C. 104), its discussion that Section 301, Taft-Hartley, "did not expressly" nor impliedly "withdraw the restrictions of the Norris-LaGuardia Act" is cogent in the case at bar since Section 303 (b) is made subject to Section 301 and the Fourth Circuit in the *Patton* case (211 F. 2d 742) has held that "common law rules with respect to liability for acts of an agent" apply in actions under Section 303. See the agency definition found in the Act's Section 301 (e) (29 U. S. C. § 185 (e)). Cf. *H. L. Mead, Inc. v. Int. Bro. of Teamsters* (C. A. 1), 217 F. 2d 46, 9.

[26] Sections 101 (b), 178 (b) and 302 (e) of Taft-Hartley (29 U. S. C. 160 (b), 178 (b), and 180 (e)). See also 93 Cong. Rec. 7001; Legislative History of the Labor Management Relations Act, 1947, Vol. 2, 1552, 1622.

plained of, as required as a basis for responsibility by Section 6 of the Norris-LaGuardia Act.

The requirements of the Norris-LaGuardia Act, as such requirements apply to a non Taft Hartley cause of action determined by a federal court, is added reason why the vague standard of responsibility adopted by the Court of Appeals ought not to be permitted to stand. Clearly, the obviously erroneous judgment resulting from the reasoning adopted by the Court of Appeals should be reversed through review by certiorari sought herein.

Petitioners assert that unless corrected, the decision of the District Court and the Sixth Circuit will have established, both as to actions under Section 303 and the common law, a new and unwarranted standard for determining a labor union's responsibility, and it will have done so despite legal precedent to the contrary.

CONCLUSION

Where, as here, the judgment of $185,000.00 of compensatory damages and $50,000.00 of punitive damages has resulted from the Sixth Circuit's holding of a Section 303 violation which is in conflict with Congressional intent, and with a decision of the District of Columbia Circuit; and the award of punitive damages results from the Sixth Circuit's approval of ancillary jurisdiction of a non-federal, state common law claim which is in opposition to Congressional intent and conflicts with enunciations of this Court and a decision of the Fourth Circuit; and liability is predicated upon an erroneous test of a labor union's responsibility in conflict with decisions of this Court and Federal Courts of Appeals; and because the errors of the Sixth Circuit herein will serve as a precedent in current litigation involving approximately $25,000,000.00 in District Courts in that same Judicial

Circuit; and for the reasons set forth herein, petitioners, and each of them, pray that this Petition for Writ of Certiorari be granted, and that a writ issue to review the said decision and judgment of the United States Court of Appeals for the Sixth Circuit entered on June 7, 1960.

Respectfully submitted,

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APPENDIX I.

Memorandum Findings of Fact and Conclusions of Law of the District Court.

(Filed January 27, 1959.)

These cases were tried together. Osborne Mining Company, Inc., is a Kentucky corporation engaged in the business of strip mining coal. Defendant, United Mine Workers of America, referred to sometimes as International union, is a labor organization—an unincorporated association—having a membership of some 300,000 persons and is international in scope. Some of its members are residents of Tennessee and other residents of various states of the Union as well as residents of Canada. It functions under a written constitution and maintains its headquarters in Washington, D. C. Its officers are a president, vice-president and secretary-treasurer.

Defendant, United Mine Workers of America, District 19, is a chartered provisional district of the United Mine Workers of America. Its jurisdiction includes Whitley, Knox, and Bell Counties, Kentucky, and all mining counties in Tennessee, including Campbell County, Tennessee. During the period of time involved in these suits its officers were a president and secretary-treasurer, each of whom was appointed by the president of the International union with their appointments confirmed by the International Executive Board. District 19 maintains an office in Middlesboro, Kentucky.

Defendant Ed Daniel is a resident of Jellico, Tennessee, and is an organizer for District 19. Defendant Dan Paul is deceased. The suit was dismissed before trial as to defendants Louis Bailey and John Grills, Louis Siler and Pete Bray, both individually and as members of the class.

Defendants Duke Link, Dan Paul, Ike Bowlin, John Link, George Smith, Ed Burress, Louis Siler, Spencer Douglas, Crit Creekmore and Jim Elliott, are residents of Campbell County, Tennessee, and were sued individually and as members of the United Mine Workers of America and United Mine Workers of America, District 19, and were made defendants as a class representing the International union and District 19. The suit was dismissed as to the individual defendants, except as to Daniel, at the conclusion of the evidence.

Osborne Mining Company sues for $2,500,000 compensatory damages, claiming that it developed a profitable coal mining business in Eastern Kentucky and Campbell County, Tennessee, and that the defendants destroyed its business by inducing and encouraging the employees of the truck haulers of its coal and employees of its sublessees who were engaged in underground coal mining operations to quit work for the purpose of forcing Osborne Mining Company to recognize and bargain with the United Mine Workers of America and by unlawful interference with its employees. The union was not certified as a representative of such employees under provisions of 29 U. S. C. A., Section 159.

John Amos, a resident of Williamson County, Tennessee, and Clifford Osborne, a resident of Laurel County, Kentucky, sue to recover $250,000 as compensatory damages claiming that Osborne Mining Company agreed to pay them ten cents royalty for each ton of coal mined on leases to be referred to hereafter in more detail.

Love & Amos Coal Company, a Tennessee corporation, is a coal sales agency of which John Amos is president and principal stockholder. This corporation served as agent for the sale of coal mined by Osborne Mining Company, and received 25 cents per ton commission for each ton mined by Osborne Mining Company and sold by it.

The sales agency agreed with Osborne Mining Company to sell the coal mined by it before selling coal mined by other companies.

Love & Amos Coal Company claims $600,000 compensatory damages on account of the alleged wrongful acts of the defendants in depriving the mining company from mining its coal.

Jurisdiction is based upon the Labor Management Relations Act, 1947, as amended, 29 U. S. C. A., Sections 141, et seq., particularly Sections 187 (A) (1) and (2) and 187 (b) thereof, and also under the common law. The claims of jurisdiction because of diversity of citizenship and the anti-trust laws, have been withdrawn.

Plaintiffs also ask judgment for large sums as punitive damages.

It is the theory of the mining company that it had developed a profitable coal business during the years 1949 through 1953 in the Jellico seam of coal in Kentucky on the Black Star lease and other properties in Eastern Kentucky; that it acquired two leases consisting of approximately 24,000 acres of coal lands known in the record as the Packard and Gatliff leases which involved property closer to Jellico, Tennessee; that these properties were suitable for both strip mining and underground mining; that prior to extension of its business to the area embraced within the two leaseholds, the Osborne Mining Company had operated farther to the north in Whitley County, Kentucky, the loading point of the coal there mined being Faber, Kentucky, and while there the United Mine Workers of America sought to disturb its operations by secondary boycotts and direct attacks; that as a result of these activities an injunction was obtained from the Chancery Court of Whitley County, Kentucky, by Osborne Mining Company and others, enjoining the United Mine Work-

ers from further interference with their operations unless the United Mine Workers of America became the bargaining agency of the employees of the mining company.

Following the injunction the mining company invested additional capital in its business in preparation of the development of the properties covered by the Packard and Gatliff leases. This development started in 1954. Railroad loading facilities at Jellico, roads, bridges and culverts were constructed, so that the coal could be hauled from the pits to Jellico, Tennessee, by trucks and there loaded on railroad cars for transportation to the steam plant of the Tennessee Valley Authority at Kingston, Tennessee.

Love & Amos Coal Company had a contract with the TVA whereby TVA agreed to take the coal produced by Osborne Mining Company from the property covered by the Packard and Gatliff leases. Love & Amos Coal Company also obtained contracts from private utilities in Georgia and Florida whereby the utility companies would purchase large amounts of coal to be mined by the Osborne Mining Company from the properties covered by these two leases as well as other properties as might be mined by the Osborne Mining Company.

The Mining company stripped the coal with its own employees at the outcrop back as far as the depth of the ground above the seam and conditions would permit and the coal remaining was mined by underground mining through leases made to individuals who would mine the coal by their employees.

The coal obtained by strip mining was removed to the railroad loading point by owners of trucks who were independent contractors acting under contract with Osborne Mining Company who were paid so much per ton for the hauling to the railroad station. These trucks were operated either by the owners or by drivers employed by the owners.

The coal mined in the underground mines was purchased by the Osborne Mining Company and was either hauled to the railroad loading point by the owner of the underground mine using his own trucks or by his employees or by individuals who were acting under contract with the underground operators who either drove their own trucks or employed others to drive them.

It is insisted that all of the employees of the truckers and of the sub-lessees were secondary employees within the meaning of the Labor Management Relations Act, 1947, as amended, 29 U. S. C., Section 152, et seq.

It is further insisted that the defendants induced and encouraged these secondary employees to engage in concerted refusals to mine and transport the coal to the railroad loading points for the purpose of coercing the Osborne Mining Company to recognize and bargain with the United Mine Workers of America as the representative of its employees.

Plaintiffs say that the defendants were successful in their efforts and that as a proximate result the Osborne Mining Company was forced to move their operations from the properties covered by the Gatliff and Packard leases to small properties in Eastern Kentucky which were non-profitable in operation, thus in effect destroying Osborne Mining Company's hitherto profitable business.

It is insisted that defendants violated the secondary boycott provisions of the Labor Management Relations Act, 1947, as amended, 29 U. S. C., Section 187 (A). It is insisted that in such violations the defendants engaged in acts of violence that were contemptuous of the law that were calculated to, and did in fact, create a reign of terror in the area where the mining company operated.

Plaintiffs say that as a result of the secondary boycott it was necessary for Love & Amos Coal Company to cancel

its contract with the Tennessee Valley Authority at a cost of $19,000, which was paid by the Osborne Mining Company, in addition to the cancellation of the Gatliff and Packard leases.

Plaintiffs say that they are entitled to damages from the defendants for violation of their common law rights, and that this Court has jurisdiction of the common law count of the complaint under the doctrine of pendent or ancillary jurisdiction, that any damages caused by the defendants that are not attributable to their secondary boycott activities may be compensated under the common law, including punitive damages.

It is the theory of the defendant International union, that this Court did not acquire jurisdiction of it by process on Ed Daniel.

This Court was of the opinion when the motion to dismiss was argued, and is still of the opinion, that service of process on Ed Daniel as the agent of the International was valid process. Admittedly, Ed Daniel was an organizer of District 19 which is merely a provisional district that is not autonomous.

During the time involved in this suit Ed Daniel was engaged in organizational activities for the International in the area where Osborne Mining Company operated. He was subject to the control of the International. Each new member of the union obtained by him enured to the benefit of the International. United Mine Workers of America v. Patton, 4th Circuit, 1954, 211 F. 2d 742, page 746.

The service of process upon the defendant unions was effectual under Section 20-223, Tennessee Code Annotated McDaniel v. Textile Workers Union of America, 36 Tenn. App. 246; UMW of A v. Meadow Creek Coal Co., Inc., 6th Circuit, decided January 21, 1959.

Jurisdiction was also acquired of the defendant unions under the class action device of service of process. Tisa et al. v. Potofsky et al., D. C. S. D. N. Y., 1950, 90 F. Supp. 175; and Ketcher v. Sheet Metal Workers International Association, D. C. E. D. Ark. W. D., 1953, 115 F. Supp. 862.

Defendants say that the Court did not acquire jurisdiction of the common law action for the reason that diversity of citizenship does not exist.

Defendants say further that the Taft-Hartley Act was not violated because: (A) there was no inducement or encouragement to concerted action to either the employees of truck owners hauling coal or of the employees mining or hauling coal for Osborne Mining Company's sub-lessees; (B) there was no violation of the Act in that neither of the classes of the employees were employees of neutral employers; (C) the Act was not violated because the organizational efforts were directed to all employees employed in the scheme of operations of Osborne Mining Company and Love & Amos Coal Company, including employees of the sub-lessees and the employees of the truck owners hauling coal for the Osborne Mining Company and its sub-lessees; (D) the Act was not violated because the controversy was primary rather than secondary; (E) John Amos and Clifford Osborne and Love & Amos Coal Company may not maintain an action under the Act as they are not parties covered by the Act; (F) if any violation of the Act is shown, defendant unions are not responsible therefor in that no person with the authority so to act for these defendants, or either of them, participated therein.

It is denied that District 19 is the agent of the International. It is also denied that District 19 was in any manner authorized by the International to engage or participate in the acts upon which the causes of action are

predicated. Defendant unions disclaim all responsibility for any and all violent or unlawful acts that may have been committed.

Defendants question the extent of plaintiffs' damages on account of the alleged tortious conduct of the defendants.

The cases were tried to the Court without a jury. The trial time consumed three weeks and one day; a record of more than 3600 pages of testimony was made and several hundred pages of exhibits filed. At the conclusion of the trial, the request for ten days additional time in which to file briefs made by the attorneys for the respective parties was granted. The briefs have been filed. These briefs, together with the previous briefs, run into several hundred pages.

The Court now makes specific findings of fact and conclusions of law as provided by Rule 52, Federal Rules of Civil Procedure.

Findings of Fact.

(1) Taylor Maddox, during the period of time material to these cases, was one of the district representatives of District 19; Ed Daniel being the other district representative. Taylor Maddox resided in Middlesboro, Kentucky.

(2) From 1953 until July 1, 1956, Ray Thomason was president of District 19 but did not function in such office after August 1, 1954 because of serious illness. From 1953 throughout the remainder of the time material to these suits, Albert Pass was the secretary-treasurer of District 19. Both Thomason and Pass resided in Middlesboro, Kentucky during such periods.

(3) Osborne Mining Company, Inc., was organized in the early 1940s. For some years prior to 1950 this cor-

poration was inactive. Prior to 1950 all of its outstanding stock, which consists of 50 shares of common stock, each with par value of $100, was owned by Clifford Osborne.

(4) Beginning in 1947 and continuing through the year 1959, Clifford Osborne engaged in coal strip mining operations near Corbin, Kentucky, on an individual basis. Beginning in 1949 some, or all, of the coal produced by Osborne Mining Company was sold by Love & Amos Coal Company.

(5) Pursuant to an understanding between Clifford Osborne and John Amos, the Osborne Mining Company was reactivated as of January 1, 1950. Osborne turned over to the corporation the equipment which he had been previously using in his strip mining operations and Love & Amos arranged for a loan to the corporation, the proceeds of which were used for the purchase of additional equipment. As a part of the transaction, Osborne transferred to Amos one-half of the outstanding capital stock of the corporation, or 25 shares. Twenty of these shares were distributed by Amos to employees of Love & Amos Coal Company without payment of a cash consideration. No written agreement was entered into between Love & Amos Coal Company and Osborne Mining Company, but it was understood that Love & Amos Coal Company would arrange for the sale of coal produced by Osborne Mining Company and would help finance it and receive for its services the sum of 25 cents per ton on the coal sold by it.

John Amos acted as the general manager of the Osborne Mining Company and directed its affairs. Clifford Osborne directed the work of the corporation in the field. W. B. Stone, secretary-treasurer of Love & Amos Coal Company, served as bookkeeper of Osborne Mining Company from 1950 through the period of time material to these cases, and during part of such time was its vice-president.

(6) From January 1 through June, 1954, Osborne Mining Company engaged in strip mining of coal on lands near Corbin, Kentucky. In 1951 Osborne Mining Company leased for its mining operations a 7500 acre tract of land in the vicinity of Corbin, Kentucky, known as the Black Star tract. The corporation commenced its stripping operations on the Black Star lease in 1953 and continued such operation thereon through June, 1954. It subleased parcels of land that were covered by this lease to various parties who carried out underground operations and sold the coal produced by such operations to Osborne Mining Company.

(7) During the period of its operation from 1950 through 1954, the coal that was produced by Osborne Mining Company and the coal produced by its sub-lessees was trucked to a tipple maintained by the company near Faber, Kentucky, and from there was shipped to consumers by rail. The strip mining was carried on by Osborne Mining Company through its own employees. The small underground operations were carried on by a number of sub-lessees and employees of such sub-lessees. Written leases were made to the sub-lessees and collateral agreements with some, if not all of the sub-lessees, called for the delivery to Osborne Mining Company of all coal mined by them on such leased premises at a price fixed by the collateral agreement.

(8) During the period from 1950 through June, 1954, Osborne Mining Company produced the following quantities of coal:

	Tons of Coal Recovered by Strip Mining	Tons of Coal Recovered by Underground Mining	Total
1950	69,348 (a)		69,348 (a)
	(a) This apparently includes both strip mining and underground mining as there was no breakdown available.		
1951	78,782.49	31,210.30	109,992.79
1952	109,131.09	130,006.84	239,137.93
1953	132,842.11	116,455.30	249,297.41
1954	91,895.00	35,249.95	127,144.95
1955	89,721.38	28,194.43	117,915.81
1956*	71,981.90	18,291.25(a)**	90,273.15

* Ten months only.

(a) Includes 2,848.30 tons not shown whether strip or underground

** Because not shown in tons the months of April, May, June, July and August are omitted.

(9) In 1951 and 1952 William Clontz, a district representative of District 19, talked with Clifford Osborne upon various occasions in an effort to get him to sign with the United Mine Workers of America a collective bargaining agreement on behalf of Osborne Mining Company.

In October, 1953, Clontz again contacted Osborne for the same purpose. Subsequently a meeting was held in the office of District 19 in Middlesboro, Kentucky, between Clifford Osborne and Ray Thomason when, according to Osborne's testimony, Thomason got mad and "hollered and screamed and went on something awful, and said a little of everything to me, and told me that I had been a sore eye to them ever since I had been in the coal business, and he didn't intend for me to put my damn dirt on the market" (R. 2012-13).

Thomason's testimony was that the meeting was peaceful and pleasant. He denied that he threatened Osborne.

(10) Subsequent to the Osborne-Thomason 1953 meeting, Osborne made known his decision not to sign a collec-

tive bargaining agreement. Some time thereafter a picket line was established which amounted to a secondary boycott of the truckers who hauled the coal produced by Osborne Mining Company and those who hauled the coal produced by the sub-lessees as the picketing was of such character which prevented the hauling of the coal.

This drastically interfered with the operations of Osborne Mining Company which, along with some of the truck haulers, obtained an injunction enjoining all picketing at the Osborne Mining Company mines on the part of District 19 and certain individuals. Subsequently, in November, 1953, an order was entered dismissing this action at plaintiff's cost.

This order contained a recital to the effect that counsel for District 19 had advised the District that under the laws of the State of Kentucky it was unlawful to picket for the purpose of obtaining a union contract unless the union represented a majority of the employer's employees and that the officials of District 19 wished to obey the law by withdrawing further picketing until such time as it would be legal to picket under the laws of Kentucky.

(11) By lease, dated December 15, 1953, Amos acquired the right to remove coal from a tract of land known as the Packard lands located northeast of Jellico, Tennessee, which consisted of approximately 7,000 acres. The term of the lease was from December 15, 1953, through January 1, 1960, with right to extend the lease for an additional term of six years, and called for the payment of minimum royalty for each calendar year beginning with 1954. Amos was given the right to terminate the lease during the term thereof upon the payment of the sum of $500.00.

The lease contemplated the mining of coal by strip mining and underground mining methods, and called for a base royalty of 25 cents per ton for each ton of coal recovered

by the strip mining method and 20 cents per ton recovered by the underground mining method.

(12) The Packard lease contained a provision permitting the assignment thereof on the written consent of the lessor, and it further provided that the lessee could sub-lease all or a part of the premises subject to the conditions of the lease upon the written consent of the lessors.

No written consent to any assignment or sub-lease was ever executed by the lessors, but the lessors recognized the oral assignment of the lease to Osborne Mining Company as the lessors accepted rent from the Mining Company for a period of some two years without complaint.

(13) By lease, dated March 31, 1954, Amos acquired from the Gatliff Coal Company and others the right to remove coal from a tract of land known as the Gatliff tract located in Whitley and Knox Counties, Kentucky, which adjoined the Packard tract on the east and consisted of some 17,000 acres.

This lease contemplated the mining of coal by both underground and strip mining methods and expressly conferring the right to mine coal from the Blue Gem, Jellico and Vanderpool seams of coal.

The term of the lease was ten years with the right to extend the lease for an additional term of ten years, and called for a royalty of 25 cents per ton for coal recovered by strip mining and 20 cents per ton for coal recovered by the underground mining method. The lease also called for a minimum annual royalty and for the rental of the camp known as Gatliff, Kentucky. A provision in the lease permitted the surrender of the lease by the lessee on the payment of the sum of $2,500.00.

(14) The Gatliff lease recites that Amos contemplated the formation of a corporation to take over the leased

property without the consent of the lessor. The lease further provided that the properties would not be further sublet without the written consent of the lessors.

No written consent to sub-let was ever executed by the lessors, but the lessors recognized Osborne Mining Company as the lessee by accepting rent from the mining company during the life of the lease.

(15) In April, 1954, instruments were prepared for the assignment of the Gatliff and Packard leases from Amos to Osborne and Amos, a partnership. Such assignments expressly provided that they were contingent upon the original lessors granting their written consent thereto.

The written consent of the original lessors were never obtained or was either of the proposed assignments executed by the interested parties.

(16) In April, 1954, written assignments were also prepared for the transfer of the Packard and Gatliff leases from Osborne and Amos, a partnership, to Osborne Mining Company subject to the conditions set forth in the original leases of the Packard and Gatliff tracts to Amos and the provisions of the unexecuted assignments from Amos to the Osborne and Amos partnership.

It is provided in these proposed assignments that Osborne Mining Company would pay all royalties due the original lessors, and in addition thereto a royalty of ten cents per ton on all coal mined from the leased premises to the Osborne and Amos partnership.

These proposed assignments further provided that Osborne Mining Company would have no authority to sublease any interest acquired by it in the leaseholds without the consent of the original lessors, and that any attempt to do so would be void and of no effect and would be operating to cancel the assignments."

These proposed assignments were not executed by either the Osborne and Amos partnership or by the Osborne Mining Company, although the Osborne Mining Company operated the properties as though the written assignments had been executed and the consents to sublease had been obtained by all interested parties.

(17) Osborne operated during the years 1950-1953 at a profit. Its taxable income was as follows:

1950	$47,351.30 (Exhibit D-2)
1951	$13,447.69 (Exhibit D-3)
1952	$21,829.30 (Exhibit D-4)
1953	$12,037.28 (Exhibit D-5)

(18) Depletion was taken by Osborne Mining Company during the years 1952 and 1953. The profits were based on depreciation of cost of equipment over a four-year period.

The proof shows that the average life of the equipment, if properly maintained, is ten years. The proof further shows that the equipment was maintained in a good state of repair.

Bonuses were given to various officers and employees in December, 1952, and December, 1953, which were charged as operating expenses, but which the company was not obligated to pay.

If the bonuses and depletion are eliminated, and the equipment schedule is revised so as to take depreciation over a ten-year period rather than a four-year period, the profits of the Osborne Mining Company would amount to:

1950	$78,729.28
1951	$43,262.96
1952	$89,276.97
1953	$90,867.91

(Exhibit P-108, and Sheets 2 to 5 of Exhibit P-109.)

(19) In 1953 Love & Amos Coal Company and Osborne Mining Company became interested in the furnishing of coal from the Osborne operations to Southern power companies as well as the Tennessee Valley Authority steam plant at Kingston, Tennessee. This was one of the reasons for seeking the Gatliff and Packard lands. The negotiations with the TVA started in 1953 and continued until the date of the contract; June 4; 1954.

(20) Amos' and Osborne's investigation of the Packard and Gatliff lands convinced them that they were valuable properties for the supplying of coal. They were convinced that the lands lay in such condition for the coal to be mined economically by strip mining and underground methods. They knew that they contained a large amount of Jellico seam coal which is considered a high quality of coal. The lands included the lower and upper Dean seams of coal as well as the seams heretofore mentioned. They believed that the seams could be mined economically. They estimated the coal reserves on these properties to exceed 50,000,000 tons.

(21) Before any arrangements were definitely made with respect to the TVA contract and the Packard and Gatliff leases, Osborne Mining Company encountered difficulty with the United Mine Workers. Clifford Osborne had been approached at various times in the early operations of the company by the representatives of the United Mine Workers seeking to obtain a contract from Osborne Mining Company recognizing the United Mine Workers as the bargaining representatives of the employees of the company.

(22) Clifford Osborne was pressured on more than one occasion to sign a union contract and the employees of Osborne Mining Company were approached at their homes and other places by the representatives of the union soliciting their membership in the union. These efforts were unsuccessful.

(23) In preparation for work on the Packard and Gatliff properties, Osborne Mining Company constructed a tipple at the Southern Railroad terminal for the weighing of coal in Jellico, Tennessee. The plan was to acquire a larger area north of Jellico where the business expanded and their building a permanent tipple.

(24) On June 4, 1954, Love & Amos Coal Company entered into a contract with the Tennessee Valley Authority. This contract called for delivery of 2500 tons of coal per week in July and August, 1954; 3000 tons per week in September and October; 5000 tons each week in November and December; 5750 tons per week through the months of 1955, and 5000 tons per week during the balance of the contract which expired July 1, 1956. The price to be paid was $3.75 per ton. On September 27, 1955, the tonnage was increased by ten per cent effective November 21, 1955 pursuant to the option given to the TVA in the contract.

(25) Osborne Mining Company expected to carry out supplying coal under the TVA contract from the Packard and Gatliff leaseholds, and the operations on these leaseholds followed the same pattern of the operation by Osborne on the Black Star leasehold, namely, underground independent coal operators sub-leasing portions of the property and supply coal to Osborne Mining Company to apply on Osborne Mining Company contracts and independent truck owners to haul the coal. The underground operators and the truck owners hired their own employees over whom Osborne Mining Company had no control.

(26) In June, 1954, the United Mine Workers, through its official Journal, announced its policy with respect to the practice of the TVA buying coal from non-union operations and criticized severely the TVA for this practice. The constitution of the union required the Journal to be read at the meetings of the local unions. Exhibit P-8, Article XIV, Section 45.

(27) Osborne Mining Company started its operations on its new leaseholds in the early part of July, 1954 on the Packard property in the Buck Creek area. The Blue Gem seam was the first seam of coal worked in that area.

With the exception of this work on the Blue Gem seam, all strip mining conducted by Osborne Mining Company on the Packard and Gatliff leases was on the Jellico seam. From the standpoint of quality and availability for mining, the Jellico seam was the best seam of coal on the Packard and Gatliff properties. Deep mining operations on a rather large scale had been conducted for many decades on the Jellico seam on both the Packard and Gatliff tracts, but such operations had been abandoned long before the execution of the Packard and Gatliff leases.

Soon after operations commenced, some 20 to 30 union men came to the strip pit of Osborne Mining Company, the work situs of practically all of the employees of that company. They asked the various employees to join the union. They told the employees that if they did not join that they would return to the pit and if they did return the situation would not be peaceful.

(28) On the morning of July 23, 1954, a riotous group of men of 50 to 100 went to the premises of Osborne Mining Company at Jellico, Tennessee, where the weighing scales and loading tipple were located and where the trucks unloaded the Osborne Mining Company coal into railroad cars.

Taylor Maddox and Ed Daniel, union organizers of District 19, were present on this occasion. Maddox wanted to explain to Osborne why the men were there. At that time he asked Osborne to sign a union contract. Daniel was back in the crowd.

There was testimony that Maddox stated to Osborne that the union members would take care of themselves and

that the trucks would not dump their coal until Osborne signed the contract.

Maddox denied that he made the statement that there would be no coal dumped until the contract was signed, although he admitted that he asked Osborne to sign the contract on this occasion. He also admitted that he explained to Osborne why the group of men were there.

The unruly group attempted to stop one truck loaded with coal from entering the Osborne Mining Company premises. The next truck entering the premises was driven by Wilford Gwinn, and the group of men attempted to stop this truck by blocking its path and grabbing hold of the truck and finally succeeded in stopping it on the premises near the scale house. One or more of the group jerked the door of the cab of the truck open and made threats to the truck driver.

There is testimony that Daniel not only failed to do anything to calm the men but at one time stated, in substance, that they were in Tennessee and would do as they pleased.

There is testimony that Daniel said, in substance, that someone ought to kick the dress off of Miss Hopkins, bookkeeper of Osborne Mining Company.

Daniel denied having made these statements.

Clifford Osborne asked the group of men to disperse and let the company carry on its operations. He talked for some time with Taylor Maddox but was unsuccessful in getting the group dispersed.

A number of other trucks came into Jellico with coal for the purpose of unloading it at this tipple but could not gain access to the tipple because of the violent attitude of the group of men, and the drivers, including the employee drivers, parked their trucks at various places on the streets and the parking lots while Osborne was

carrying on his conversation and attempting to restore order.

Neither Maddox nor Daniel attempted to persuade the group to disperse in order that the coal could be unloaded. An unsuccessful attempt was made to obtain the help of police.

Mr. Mahan, the company lawyer, appeared and the truck drivers were instructed to take their loads of coal to the company's tipple at Faber, Kentucky. This coal was scheduled to go to the TVA but was shipped from Faber on some other order.

Osborne stated to Maddox on this occasion that he planned to secure an injunction against the activities of the group of men but the attitude displayed by Maddox to this remark was that of disdain.

(29) The following day July 24, 1954, an injunction was obtained against the riotous activities of the group of men by Osborne Mining Company and some of the truck drivers in the state court at Jacksboro, Tennessee, the county seat of the county in which Jellico is situated. This suit was dismissed at plaintiffs' cost on December 19, 1956, which was after the two leases were surrendered.

Approximately a week elapsed before another truckload of coal went into Jellico. On August 2, 1954, trucks of coal entered Jellico, and as they entered they were stopped by groups of men in the streets and when the trucks would stop the drivers were arrested under warrants which charged them with improper equipment or failure to have Tennessee license.

These warrants were served on the drivers and they were arrested by a deputy sheriff, Spencer Douglas, a member of the United Mine Workers. These warrants were issued against the drivers of the trucks who were plaintiffs, along with Osborne Mining Company, in the

injunction suit filed at Jacksboro. Several of the arrested drivers were employee-drivers employed by the independent contractors who owned the trucks, and several of the arrested drivers owned the trucks which they were driving.

The cases against the drivers were dismissed by the General Sessions Court of Campbell County upon the statement of the prosecuting witness on the stand that he was told by someone to swear out a warrant. The circumstances surrounding the swearing out of the warrants indicated that there was no justification therefor. This was a serious abuse of legal processes which was inspired by union activities.

The name of Spencer Douglas, deputy sheriff of Campbell County, appeared frequently in the testimony relating to the circumstances of swearing out of the warrants. There is testimony that he asked witnesses to sign the warrants. He was a defendant in the Jacksboro Chancery Court proceeding. He was a member of the group of men of July 23, 1954.

(30) For a number of months after the foregoing instances and until the winter commenced, crowds of men assembled around the tipple premises of Osborne Mining Company in Jellico interfering with the truck drivers as they came into the tipple.

(31) The foregoing activities on the part of the union members undoubtedly interfered with the plans of Osborne Mining Company to secure a large number of sublessees for underground operations on the new leaseholds.

(32) In the fall of 1954, stripping production reached the rate of production which was experienced in 1953 on the Black Star operation. The underground production was increasing to a point where it reached 6000 tons per

month in November, 1954, and in the same month the stripping operation production exceeded 11,750 tons.

(33) As is customary in winter months, production fell off during the winter months of 1954-55. Osborne Mining Company expected production to pick up in the spring and summer months.

(34) The United Mine Workers was continuing its attempt to organize mines in the area of Jellico, Tennessee, and in the fall of 1954 its organizer, Ed Daniel, sought to obtain a contract from Maiden mine in Newcomb, Tennessee, some four miles from Jellico.

Subsequently, after a picket line had been placed at this pit, on December 16, 1954, Ed Daniel was observed by Joe Kidd driving from Jellico toward the pit. Kidd, a truck driver hauling coal from this pit, returned for another load and the picket line had disappeared except for three men. As Kidd left the pit with his next load, two men in a car tried to stop him, followed him and fired pistol shots into his truck as he passed.

The damage to the tires of the truck was repaired at the State Line Service Station in Jellico, the place where the trucks which hauled the Osborne coal were serviced and kept when not in operation.

The drivers of the Osborne trucks learned of the Maiden mine shooting incident.

(35) In 1954 and 1955 Osborne Mining Company purchased a new stripping shovel and a new bulldozer. The company was negotiating for a larger shovel but the negotiations were terminated when the violence of April, 1955 broke out. It sold its Black Star lease, retaining the rights to the coal from the underground mines.

(36) Beginning in August, 1954 and continuing throughout the remainder of the period of time Osborne Mining

Company operated on the Packard and Gatliff tracts, which period ended in October, 1956, a number of small underground mines were opened on the Jellico seam in the Buck Creek area. These mines were operated on small tracts fronting on what is known as the high wall along the strip outcrop.

Each of these tracts for these underground mines was sub-leased by Osborne Mining Company to one or more individuals on printed forms prepared for Osborne Mining Company for the sub-leasing of small tracts on the Buck Creek area of the Packard lease. During the year 1954, twelve such sub-leases were executed; during the year 1955, nineteen such sub-leases were executed, and during the year 1956, twenty-five such sub-leases were executed.

(37) The sub-leases under which the small underground mines in the Buck Creek area operated called for the payment of 25 cents per ton royalty to the Osborne Mining Company for each ton of coal removed by the sub-lessee.

It was provided therein that the sub-lessee would diligently operate the mine and keep accurate records, comply with applicable laws and hold Osborne Mining Company harmless from all claims.

Osborne Mining Company had the right to terminate the lease immediately upon the failure of the sub-lessee to fulfill his obligation thereunder. Either party could terminate the lease on 30 days' notice.

(38) None of the sub-leases expressly provided for the disposition of the coal mined thereunder. It was the understanding and practice of the sub-lessees that such coal was to be trucked to the Osborne Mining Company loading yard in Jellico.

The Osborne Mining Company paid each sub-lessee $2.90 per ton for all coal delivered at the tipple on the Osborne Jellico loading yard.

(39) As a matter of practice, Osborne Mining Company did not require the payment of the 25 cents per ton royalty stipulated in the sub-leases unless that 25 cents royalty was taken into consideration in the price of $2.90 per ton which Osborne Mining Company paid for the coal.

(40) Some of the sub-leases were made by Osborne Mining Company with two or more individuals who operated the mine themselves with additional employees.

The proof is not clear as to the average amounts earned by the sub-lessees of these small mines. It is reasonably clear, however, that the amounts earned were not much more than living wages and in some instances hardly as much as living wages.

(41) Some of the mines in the Buck Creek area opened into a mine which had been operated for many years on the Packard tract but which had been closed since 1945. Small capital was required for the operation of these mines. The equipment ordinarily used therein consisted of wood or steel rails laid upon wood ties, a mine car and hand operated drills. In one or more of these mines a mule was used to pull the mine car to the surface.

(42) Accurate records are unavailable to determine the average production of these underground mines.

(43) Upon termination of its stripping operations in the Buck Creek area on or about October 1, 1954, the Osborne Mining Company moved its equipment across the mountain to a point near the Packard hollow. It continued its major stripping operations in this area for several months, stripping about the entry-ways and workings of the abandoned Packard mine.

(44) Through December 31, 1954, Osborne Mining Company failed to deliver 25,172.50 tons of coal called for delivery during that period by its TVA contract in addition

to the 5,070 tons delivery of which it had failed to make prior to July 1, 1954 and for which delivery failure it had been excused by the TVA on July 2, 1954.

Osborne Mining Company advised the TVA that its failure to make deliveries in accordance with its contract was due to union activities which greatly hampered its operations. On January 31, 1955, the TVA excused such failure.

During the month of January, 1955 through August, 1955, Osborne Mining Company produced by stripping and small mining operations and shipped the following quantities of coal to the TVA:

Month	Tons Produced	Tons Shipped TVA
January	13,617.55	13,087.35
February	12,654.83	12,578.35
March	14,893.00	14,892.95
April	2,438.05	2,438.05
May	10,542.15	10,542.10
June	11,672.50	11,672.50
July	7,628.70	7,628.70
August	5,434.10	5,434.10

(45) During the five years from 1950 through 1954, the average coal produced per year by stripping methods by Osborne Mining Company was 95,706.27, and by underground mining methods through sub-lessees was 63,277.96 tons.

(46) In 1954 Osborne Mining Company produced 91,895 tons of coal by strip mining methods, and 35,249.95 tons of coal by underground mining methods through sub-lessees. In 1955 Osborne Mining Company produced 89,711.35 tons of coal by strip mining methods, and 28,208.43 tons by underground mining methods through sub-lessees.

(47) During the months of February and March, 1955, Osborne Mining Company moved certain of its equipment to the Kensee Hollow where it undertook to continue stripping operations. This property is situated two or three miles to the northwest of Jellico and was not embraced in either the Packard or Gatliff leases.

Osborne Mining Company claimed that it moved from the Packard Hollow location on account of the unrest of its employees due to interference by union activities. The operations in Kensee Hollow were apparently not successful and were soon abandoned.

(48) On April 6, 1955, a group of two or three hundred men assembled in Jellico. They stopped the trucks loaded with coal coming into Jellico and dumped the loads of coal in the streets and in the parking lots in the city. They forced one of the employee drivers hauling coal to Osborne Mining Company to dump his truck and this driver was assaulted by one or more members of the riotous group. Another driver hauling Osborne coal was chased on foot through the Osborne tipple and his truck was dumped on a nearby lot by the mob. One or more members of the group forced an elderly driver of a truck to unload in the street by hand although the truck had a mechanical dumping mechanism. Spencer Douglas, who was a member of the group on July 23, 1954, was also in this group.

(49) This group left Jellico and visited Newcomb, Tennessee, four miles southeast of Jellico, and also visited the Boots & Cox mine, operated by a partnership composed of Boots and Cox. Boots, a man 65 years of age, was beaten severely by the mob. Mr. Cox was also beaten and kicked in a violent manner. This mine remained closed for approximately a week and the operators called the organizer, Ed Daniel, who came to the mine office. The operators told Daniel they were ready to sign a contract,

and upon signing the contract the mine re-opened and had no more trouble.

(50) In February or March, 1955, two men went to the strip pit of Frost & Parrish near Newcomb; they demanded that Frost sign a contract. He stated that he would discuss it only with Daniel. The men, one of them was armed, departed and later in the morning Daniel and several others appeared, and Daniel asked Frost if he wanted to sign the contract but Frost refused.

On April 6, the same mob that had visited Jellico and the Boots and Cox mine visited the mine of Frost and Parrish, where one or more members proceeded to attack and assault in a vicious manner both Frost and Parrish. The mob also attacked the employees in the mine, leaving them prostrate in the muddy pool at the bottom of the pit.

(51) Ed Daniel was seen on the Newcomb-Jellico road on the morning of April 6 at the time that the mob was in the Newcomb vicinity; he was seen first parked beside the highway talking to a group of men who pulled in beside him; shortly afterwards he was seen travelling on toward Jellico with a caravan of cars following a few minutes behind him.

Daniel denied his presence there and claimed that he had been to LaFollette to see one Cordell, an employee and mine committeeman of the Rex mine.

Cordell was not employed in the Rex mine until May, 1955, and was at no time a member of the mine committee at that mine.

(52) Groups of men came into Jellico the following day, April 7, 1955. On that date the board of aldermen of Jellico passed a resolution describing the mob activity and requesting the Governor of Tennessee for assistance to cope with the situation.

(53) Following the week end of April 9th and 10th, on April 11th, 1955, a group of men assembled again. These men visited several union mines in Campbell County and forced the mines to close, and on this date the group visited the tipple of the mine of Pennington and Phillips, at Pioneer, Campbell County, Tennessee. This mine was under union contract.

In response to Phillips' inquiry as to the reason for the disturbance, he was told to leave his mine closed until he was advised he could open it again.

Phillips later went to Ed Daniel in Jellico, Tennessee, and asked why the mob had come to his mine since he had a contract with the union. Ed Daniel advised him that since Phillips' employees were not members of the union he could not operate his mine.

Daniel advised Phillips to go to District 19 headquarters at Middlesboro, Kentucky, and talk to Albert Pass, secretary-treasurer of District 19.

Phillips conferred with Pass in Middlesboro and was advised by Pass that if his men would join the union he would not be bothered any more. Daniel and Maddox shortly thereafter signed up the employees and the mine reopened.

(54) The mob visited the Van Huss mine between La-Follette and Jellico, Tennessee, on April 11, 1955, where they violently attacked Van Huss. They buried him under a pile of dirt. They forced his employees to beat him and curse him. His clothes were stripped off and he was whipped and then thrown into a pool of water and doused up and down. One of his employees was treated in the same manner. Lowe, a member of the mob on that occasion, referred to Daniel who some several months previously had tried to get Van Huss to sign a union contract.

(55) On April 13 and 14, 1955, the same group of men returned to Jellico and marched through the streets. They marched through the business establishments of the mayor and aldermen, who maintained businesses in Jellico. This marching followed the passage of the resolution of the board of aldermen. Spencer Douglas and George Smith, union members, were again in this group.

(56) Only three men of the stripping crew of the Osborne Mining Company were working on April 13th. They were uncovering coal on the Packard property although the coal was not being loaded because trucks could not go into Jellico.

On April 13th, Clifford Osborne went from the strip pit toward Jellico over the Cane Gap road. As he came down the south side of Cane Gap he saw a long caravan of cars approaching. He barely had time to turn his car around and go back over the mountain. The cars at the head of the caravan gave chase. They chased Clifford Osborne north back down the Cane Gap road into a hollow where the stripping crew was operating, where they lost him.

The men in this caravan of cars searched the pit of Osborne Mining Company and found no one there because they had gone into the woods.

(57) Pass, Daniel and Maddox made union speeches in Jellico on April 11th. They urged their audience to keep the scab coal out of Jellico. Pass is alleged to have stated to them that if they got in trouble the union would be behind them. This he denied.

Wicks, a union member, was a member of the group that visited the Osborne pit and demonstrated through the Jellico business houses on April 13th.

(58) Osborne Mining Company, not having delivered any coal to the tipple since April 6, 1955, began delivering coal to the tipple on April 27, 1955. Taylor Maddox and

Ed Daniel were on the streets of Jellico on that date. They watched the operations of the Osborne tipple and circulated among groups of union men on the streets of Jellico.

(59) On April 28, 1955, a group of men consisting of several hundred returned to Jellico. They visited the place where the trucks that haul Osborne coal were kept overnight and stood around in groups pointing their fingers and evidencing a belligerent attitude toward the truck drivers who were assembled at the State Line service station.

Ed Daniel was observed talking to a group of men a short distance from this filling station. When Daniel left this group the men in the group got in cars and proceeded to parade several times in their cars in front of the State Line service station where the truck drivers were located. These cars drove back and forth in front of this station in an obvious effort to intimidate the on-looking truck drivers. Maddox was parked in a car near the place where these cars made their turn at the north side of town watching the operation.

Several officers of the state police of Tennessee and Kentucky were present but were unable to cope with the situation.

On this day Spencer Douglas made a speech from a platform to the group reassembled in Jellico. The result was that another delay in the delivery of coal to the Osborne tipple ensued. There was no further attempt to deliver coal until May 11th, 1955.

(60) The foregoing activities were designed and intended to create, and did create, a reign of terror in the Jellico area with a design to induce the closing down of the non-union mines and the concerted stopping of mining and hauling of coal from those operations.

The preponderance of the proof shows that the union organizers, Ed Daniel and Taylor Maddox, closely associated themselves with the groups that created the reign of terror in the Jellico area and conferred with the members of such groups from time to time while they were engaged in activities that prevented the operation of the non-union mines and the hauling of coal therefrom to the Osborne Mining Company tipple in Jellico, Tennessee.

These union activities were successful in getting some employees of the operators to join the union and after so joining no further trouble occurred at these mines. In these instances the union benefitted directly from the organizing activities of Daniel and Maddox.

(61) The group activities and violence engaged in by the various groups in the area created fear in the minds of both the primary and secondary employees, which, together with the warning and threats and acts of violence to some of the employees, caused all of them to stop working for a period of several days. Many of these employees did not return to work although some of them did return to work in May and the following months of 1955.

(62) Groups of men continued to occupy the streets and sidewalks in front of the Osborne tipple during the ensuing months of 1955 until the cold weather of the winter 1955-56. These groups would sometimes form picket lines in front of the tipple, and would on occasions point their fingers, block the driveway, and otherwise display hostility toward the truck drivers. Daniel and Maddox were constantly talking to these groups of men. The picket line referred to Love and Amos and Osborne individually as well as Osborne Mining Company.

(63) During April, 1955 and for months thereafter, there were repeated instances in which large numbers of nails were found on the roads used by the trucks hauling

the Osborne coal and which roads were also used by miners going to the underground mines and the strip pits as they went to and from work. The scattering of nails on the road was inspired by union activities of the International and its members.

(64) The effect of the violence and the constant threat of the eruption of more violence and the other activities obviously hampered to a great extent the delivery of coal to the Osborne tipple, the truck drivers taking special precaution in surveying the streets of Jellico before they brought their coal into Jellico. The Osborne Mining Company was required to maintain guards on the particularly hazardous wooded sections of the road between stripping operations and the tipple. On occasions the truck drivers declined to haul.

(65) The effect of the violence, warnings, threats, and acts of violence to both primary and secondary employees, was great on the coal operation.

Some of the operators had developed new mines and were able to produce coal at the beginning of April, 1953. Some of them were producing coal prior to that time. Practically all of these operations were closed for at least a period of a month. The underground mine on the Black Star lease never again delivered coal to the Osborne tipple. A number of the mines on the Packard property closed permanently and underground miners employed in those mines did not return to the production of coal for delivery to the Osborne Mining Company tipple.

Some of the underground mines on the Packard property re-opened for a period of a month or longer but the production of coal from the underground mines never again amounted to any substantial quantity. Miners planning additional mines on the leases declined to proceed although there was a plentiful supply of manpower in the area.

(66) Through fear created by the mob violence and warnings and threats issued by union members, the United Mine Workers of America was able to obtain the signatures of a number of other operating companies other than Osborne Mining Company in the area to the National Bituminous Coal Wage Agreement the contract entered into by the union with signatory operators all over the country.

Under this contract the United Mine Workers became entitled to a percentage of the initiation dues and monthly dues of the miners employed by such operating companies who signed the agreement, and the contract also required those operators to contribute 40 cents per ton to the United Mine Workers of America Welfare and Retirement Fund, and a similar participation by the United Mine Workers in initiation fees and monthly dues from miners employed by mines which already, before mob activity, had contracts with the union but the employees of which had not theretofore been union members.

By taking advantage of the group activities, threats and warnings, with knowledge thereof, and receiving the benefits aforementioned, the United Mine Workers of America both evidenced the authority of the members of the groups to act on behalf of the union and ratified the conduct of the groups.

(67) In the month of June, 1955, certain members of the groups were put to trial in the State criminal court at Jacksboro, Tennessee. Daniels and Maddox were present at this proceeding as well as other members of the groups who participated in the acts of violence in the Jellico area.

(68) While the expense of the defense in the criminal cases at Jacksboro were paid directly by District 19 of the United Mine Workers, they were in effect paid by the International union. The International advanced $3,000 to

$5,000 per month to District 19 for the payment of deficits in general operating expenses in District 19, including the organizers' salaries, and also paid organizational expenses of District 19, which, in June, 1955, amounted to $10,000.00. In the same month District 19 paid the attorneys who represented the defendant in the criminal cases out of the fund in which the $10,000.00 was deposited. The $10,000.00 was sent by the International to District 19 for organizational expenses.

(69) During and following the April, 1955, violence, numerous members of Osborne Mining Company's stripping crew quit work because of the violence and the fear resulting therefrom. These included Leo Black, Ed Black, R. D. Cardwell, James Tidwell and Monroe Wifford, all strip shovel operators, and who were essential key men in the stripping operations.

(70) The employees of Osborne Mining Company in the stripping crews as well as the truck drivers of independent contractors who hauled the coal received repeated threats and warnings from union members to the effect that if they did not quit mining and hauling coal bodily harm would come to them. These threats and warnings were received repeatedly through the early summer of 1955.

(71) Amos and Osborne became convinced that it was hopeless to try to continue operations at Jellico in the face of the continuing strife, and on April 7, 1955, attempted to cancel the TVA contract under the provisions of the penalty cancellation clause. This cancellation was rejected by the TVA because not timely given under the provisions of the contract.

(72) On July 14, 1955, at approximately 11:00 p. m., while the night shift of the stripping crew was operating, rifle shots began to rain down among the men. The stripping operation was lighted by lights on the shovels. The shots

came from the darkness across a ravine. Approximately 100 rounds of ammunition were fired into the pit. The cabs of the shovels were struck by a number of bullets which came within a few feet of the men operating the shovels. One man was hit by a bullet.

(73) In the following months of the fall of 1955 and in the spring of 1956, there were other efforts to intimidate the truck drivers and the stripping crews. These included the burning of haystacks in close proximity of the property being stripped at night in plain sight of the stripping crew; the shooting at a lone guard at the stripping pits; the displaying of mysterious lights in the woods around the pits and scattering of nails in the road.

(74) The acts of brutality and lawlessness committed on others in the area, the frequent warnings and threats received by the members of the stripping crews, the continued effort to organize Osborne Mining Company, seriously interfered with the mining of coal by the Osborne Mining Company and the hauling of the coal by the coal haulers to the Osborne Mining Company tipple in Jellico.

(75) Following the shooting and the other acts of intimidation, Osborne Mining Company lost a number of additional key employees from its stripping crew who quit because of fear. A few replacements were found but these replacements were not willing to endure the hazards of the operation very well. It became impossible to replace the men in the stripping crews who had quit. The hostility of the union toward the Osborne Mining Company was broadly known throughout the area.

(76) In the late summer and fall of 1955 the stripping production of Osborne Mining Company suffered a drastic decline because of the loss of skilled operators and because of the shortage of truck drivers.

(77) The underground production continued to constitute only an insignificant tonnage during the latter part of 1955 and until Osborne's operations on these properties ceased.

(78) On September 3, 1955, because of the hopelessness of the prospects of filling the TVA coal contract, the Osborne Mining Company gave notice through Bove & Amos Coal Company of the termination of the TVA contract, such termination to become effective March 6, 1956, under the terms of the contract.

(79) The officials of Osborne Mining Company attempted to hold on to the leases and continue stripping operations for a number of months thereafter.

(80) Osborne Mining Company throughout its entire period was moving its operations away from the Jellico area, except when it moved on the Kensee property, and closer to the town of Gatliff, Kentucky, a town near the northern border of the Gatliff property, this being a community friendly to Osborne Mining Company employees.

It was felt by the company officials that this location offered better protection than the wooded uninhabited area which lay closer to Jellico, Tennessee, and there was less likelihood of a repetition of an armed assault on the stripping crew.

By January, 1956, the remaining operations of the Osborne Mining Company stripping crew were carried on in the immediate vicinity of Gatliff, Kentucky. By this time the equipment was being operated only a relatively small portion of the total working time available because of the shortage of competent personnel.

(81) Coal produced by the stripping crew in 1956 was shipped from a tipple at Gatliff, Kentucky, on the L. & N. Railroad. This coal was supplied on contracts with con-

sumers other than TVA. The cost of shipping coal from Gatliff, Kentucky, to the Kingston Steam Plant of the TVA was 47 cents per ton higher than shipments from Jellico, Tennessee. Also, the TVA contract called for delivery on cars at Jellico, Tennessee.

In an effort to meet the delinquent deliveries on the TVA contract, the officials of Love & Amos and Osborne Mining Company proposed to the TVA that coal be loaded at Gatliff and shipped to Kingston via the L. & N. Railroad with the increased freight cost to be shared equally by the TVA and Osborne Mining Company, but the TVA declined this proposal.

(82) Osborne Mining Company endeavored to fill other and new contracts during 1956. A contract for 12,500 tons was entered into with Georgia Power Company in January, 1956, and a contract for 75,000 tons was entered into with Georgia Power Company in March, 1956.

Neither of these contracts could be entirely filled by Osborne Mining Company and Love & Amos Coal Company transferred these two contracts to an affiliated coal sales agency and a large part of these contracts was filled by coal supplied by another operator.

(83) Other new contracts were not sought by Osborne Mining Company. A substantial long-term contract with Georgia Power Company to be filled with Osborne coal was declined because of the belief of the officials that the continuing fear and threat of violence in the area would make it impossible to rebuild the operation and fulfill the contract.

(84) In the months of April, May and June, 1956, declines in the production were showing increasing losses on the part of Osborne Mining Company. The stripping crew was greatly depleted and replacements of personnel were

difficult if not impossible to obtain. The fear that prevailed in the area continued.

(85) The union continued in its effort to either organize the Osborne Mining Company or to prevent it from operating its leaseholds.

The preponderance of the evidence shows that Daniel and Maddox in the fall of 1955 had expressed their intent to keep after the company, and that Pass, the district treasurer, in January, 1956, had declared that the union had driven Osborne Mining Company from Jellico and would also drive it from Gatliff and had asked for assistance in getting a list of the names of the company's employees. Maddox continued to watch the Gatliff tipple of the company.

(86) In June, 1956, the officials of Osborne Mining Company definitely decided to abandon the leases and to move to another area where the dread and fear would be removed and the crew could be rebuilt and the equipment of the company could be used to a more profitable advantage.

Stripping operations ceased on the new leaseholds in July because of the losses being suffered. Sums were paid to the landowners in liquidation of the lease obligations.

(87) Osborne Mining Company had prospected some of the virgin seams of coal on the Packard lease early in the year 1956, but its employees would not move from the vicinity of Gatliff, Kentucky, to these prospective areas which lay in the wooded area near Jellico.

(88) Prospecting for coal was carried on in other areas by Osborne Mining Company, one of which was on the Black Star property adjacent to the old Black Star lease.

The Osborne Mining Company had been solicited by the Black Star Coal Company to return to this lease, but when

thy mining company's officials were ready to sign a new lease with Black Star, the latter declined to enter into the lease, the asserted reason being that the contract which Black Star Coal Company had with the United Mine Workers, as interpreted by the parties, prohibited Black Star Coal Company leasing any of its land to a non-union operation.

This is a standard clause in the Bituminous Coal Wage Agreement of the United Mine Workers which is entered into by all signatory coal operators. It was this clause so applied by the union which barred the return of Osborne Mining Company to the Black Star properties.

(89) Osborne Mining Company finally moved its operations in the latter part of 1956 to the vicinity of Graves, Kentucky, and then to London, Kentucky, where operations were continued on a series of small leases.

(90) Osborne Mining Company since the latter part of 1956 has continued to operate in the vicinity of London, Kentucky, on small leases. Its operations have been at a loss. The land upon which it has operated has been the best available coal lands obtainable by the company where the crew could be built to operational size. However, the coal seam on these lands averages 14 to 18 inches in thickness. The equipment must be repeatedly moved from one small lease to another. Underground mining and subleasing for underground mining on these premises is not possible. The operation on these lands is not being carried on at a profitable figure. The company has suffered a loss in both of the years operated, namely, 1957 and 1958.

(91) Subsequent to a surrender of the leases the G & R Coal Company, a non-related organization, commenced and has continued to the present both underground and stripping operations similar to those of the Osborne Mining Company on the Packard property.

This company operates under a labor contract with the defendant union and the union has thus reaped substantial benefit from having caused the Osborne Mining Company to surrender the leases. By knowingly accepting these benefits the union has evidenced its approval and ratification of the means used to achieve the end.

(92) On July 7, 1956, the TVA sued the Love & Amos Coal Company for damages for failure to deliver as required by the TVA contract. This suit was settled by the payment to TVA of $10,000.00 by the Osborne Mining Company.

(93) By purchase order dated December 23, 1957, the Tampa Electric Company ordered from the Love & Amos Coal Company for its Gannon Station tonnages of coal at the following rate:

Year 1958	350,000 tons
Year 1959	700,000 tons
Year 1960	700,000 tons
Year 1961	1,000,000 tons

The order was contingent on a freight rate not to exceed $4.65 per ton, price $4.15 per ton, cancellable on 12 months notice by supplier or purchaser, and "In the event West Kentucky Coal Company should begin to perform under our original contract with Nashville Coal Company this agreement will terminate forthwith."

The coal was to have a minimum heat value equal to the Osborne mine coal. The above tonnages were to increase to about 2,500,000 tons per year (Plaintiffs' Exhibit P-37).

This was the type of business that was contemplated by Love & Amos Coal Company and Osborne Mining Company at the time the Osborne Mining Company obtained its two new leaseholds.

(94) The various groups in creating the reign of terror in the Jellico area, and in threatening and committing acts of lawlessness and violence against the secondary employees and others in the area, were furthering the organizational efforts and interests of the defendant International union.

(95) The union organizers Daniel and Maddox were direct employees of District 19 of the International, but were in fact and in law the representatives of the United Mine Workers of America.

Their work included work in the organizational interests and objectives of the International and they were so instructed. In accomplishing these objectives, union organizers frequently resorted to the use of moving groups of men in automobiles.

(96) Daniel and Maddox in their organizational activities worked with the groups of men who created a reign of terror in the Jellico area. In so acting they were furthering the interests and objectives of the International and the International is bound thereby.

(97) District 19 is not a separate autonomous body from the International but is a mere division of the International. Since prior to 1936 District 19 has been a provisional district. Such status is authorized under the constitution of the International, Article III, Section 2. It authorizes the International officers to revoke a district charter and to give such district a provisional status. Under such status principal officers of the district are appointed and paid by the International and this has been done in District 19 continuously since 1936.

The reason for relegating District 19 and other districts to a provisional status was to increase and strengthen the International by giving it more effective control over the officers and organizers of such districts.

District 19 has no by-laws or other rules of self government, it holds no conventions or no general meetings with members or other delegations, it has no elections, it is governed by the officers appointed by the International. District 19 is not self-supporting but receives financial help from the International.

While some funds received from the International are called loans throughout the period of time involved in these cases, such advancement of funds occurred practically each month. No security was furnished for such loans; no assurance or likelihood of repayment in fact existed; the ordinary debtor-creditor situation did not exist, but the advancements were made in order to maintain the district as an effective agency in carrying out the work and objectives of the International.

In addition, during the period involved in these cases, the International made outright grants from its funds to District 19 for organizational purposes, including the following amounts on the dates indicated:

$ 4,000.00	August	4, 1954
$10,000.00	June	28, 1955
$ 1,000.00	October	6, 1955
$ 1,500.00	October	17, 1955
$13,500.00	October	17, 1955
$ 6,000.00	November	10, 1955
$10,000.00	August	1, 1956

(98) The acts of District 19 and its representatives in organizing work are the acts of the defendant International.

(99) The International during the period involved carried on an intensive and integrated organizing campaign especially in southern districts and in the bituminous coal fields. Its own official reports referred to the campaign as that of the International and the International officers

have considered it of foremost importance. Special assessments of the entire membership were levied for the sustaining of the organizing campaign.

(100) The International directly and specifically encouraged and promoted organizing efforts of its district representatives and members in District 19 which resulted in injury to the Osborne Mining Company. It did this through financial contributions and through publications in the United Mine Workers Journal, and distribution thereof to its members of a speech of its president, John L. Lewis, and of his testimony before the Secretary of Labor, in both of which he expressed hostility toward all operations supplying non-union coal to the TVA.

(101) The union organizers and members of the groups and those who issued the warnings and threats and who committed the acts of violence and intimidation to the secondary employees, were not asking the secondary employer or secondary employees to join the union or sign a union contract, but were insisting simply that the secondary employers and secondary employees stop mining and hauling coal for the Osborne Mining Company tipple. Osborne Mining Company had only two employees at the Jellico tipple property.

(102) The principal situs of the dispute was not at the Jellico tipple but at the stripping pits several miles away where the numerous employees sought to be organized were actually engaged in work. This was the logical place for primary picketing and the only place of common activity frequented by all the employees save the two at the tipple.

(103) The logical situs of the work of the secondary employee truck drivers was at the tipple, which was the only point of activity common to all such drivers and their principal occupation was hauling coal to that tipple.

(104) Picketing and other activities at and in the immediate vicinity of the tipple, the parking lots, the State Line service station, were not conducted so as to minimize their impact on secondary employee truck drivers or on secondary employees of the underground mine, rather they were conducted so as to cause the maximum impact.

(105) If the tipple be considered a primary situs of the dispute, activities addressed to secondary employees were not reasonably confined to the premises or to the entrance thereto, but were spread out in neighboring streets and on parking lots in Jellico and on highways leading from the mine pits to the Jellico tipple.

The members of the crowds engaged in picketing moved on many occasions several blocks to the vicinity of the service station used by secondary truck drivers for storage and maintenance of their equipment and having no reasonable relationship to the situs of any dispute.

(106) The men participating in the picketing and other activities did not continuously remain in the immediate area of the tipple driveway, but would scatter and reappear as truck drivers approached with coal thus evidencing their attention to secondary employees rather than primary employees.

(107) Osborne Mining Company was not engaged in the business of underground mining of coal or the business of transporting of coal by truck, but throughout its active existence it has been engaged exclusively in strip mining and has caused its coal to be hauled by independent contractors and has bought underground coal from independent contractors.

(108) Osborne Mining Company did not control the secondary employer truck owners or their drivers, nor did it control the underground mine operators or their em-

ployee miners. There was no common ownership between Osborne Mining Company and the various independent contractor truck owners and sub-lessee mine operators.

The secondary employees were not concerned with any dispute between Osborne Mining Company and the defendants, nor were the defendants concerned with the secondary employees other than as a means of forcing Osborne Mining Company to yield to their demands.

(109) The acts of violence and intimidation were intended to, and did, create a reign of terror in the Jellico area in order to promote the International's organizing coupaign. Said acts and resulting reign of terror were intended to, and did, induce and encourage the employees of employers working for persons other than Osborne Mining Company both in mining and hauling of coal to the Osborne tipple to engage in a concerted refusal in the cause of their employment to mine and haul coal to said company and the objective thereof was to force Osborne Mining Company to bargain with the defendant International as the representative of its employees without said International having been certified as the bargaining representative of said employees.

(110) Osborne Mining Company suffered substantial injuries as a result of said inducement and encouragement, but that part of their total injuries suffered caused by said inducement and encouragement cannot be separated from that part of the total injuries caused by primary acts of the defendants directly against Osborne Mining Company's own officials and employees.

(111) In any event, with respect to the cause of action for violation of 29 U. S. C. A. 187, inasmuch as the defendants' conduct was willful and intended to cause the total injuries which did result to Osborne Mining Com-

pany, the defendants cannot rely upon the said primary activities as an intervening cause in any way relieving them from responsibility for the total injuries suffered by plaintiffs, since the interference with the businesses was the planned and natural consequence of the defendants' wrongful acts in violation of the aforesaid statute as well as the wrongful acts in violation of the common law.

(112) The said secondary activities of the defendants tending to induce or persuade the secondary employees as aforesaid, had an effect far beyond those secondary employees immediately involved. The activities in July and August, 1954, drastically slowing down the buildup of the underground production; the dumping of trucks and beating of drivers; the acts of intimidation at the State Line service station, and visits to the homes of secondary employees in the light of the pattern of terror throughout the area, naturally resulted in inducing of persons to stop their mining and hauling of coal to the Osborne tipple for numerous days and the underground production was substantially and permanently impaired, and the production of strip coal was permanently impaired by the quitting of the truck drivers' employees.

Also because of the aforesaid activities and the fear resulting therefrom many members of the stripping crews of Osborne Mining Company quit the company thus seriously impairing its ability to produce strip coal. All of this resulting damage was effectively accomplished before the shootings in the strip pits, a primary activity.

(113) Osborne Mining Company was an established business at and before the period of time involved in these suits. Its past record showed that it was capable of making profits. Its net profit for income tax purposes from 1950 through 1953, or for a four-year period, averaged $23,666.39 per year.

Net income excluding depletion deduction for the four-year period 1950-53, averaged $36,290.45 per year, and net income excluding depletion deduction with ten-year (rather than four-year) depreciation averaged $62,056.89 per year during this same period, and net income excluding depletion deduction with ten-year depreciation and excluding bonus payments for the same year averaged $75,519.39 per year, and as heretofore stated, net income for income tax purposes averaged $23,666.39 per year.

(114) Osborne Mining Company, as before shown, was required to pay $10,000.00 for failing to fulfill the TVA contract; $2,500.00 was paid to Gatliff Coal Company, $500.00 paid to the Packard land owners for the cancellation of the two leaseholds; $15,000.00 minimum royalty was paid to Gatliff Coal Company for 1955, and $12,413.60 was paid to that company as minimum royalty for 1956.

Osborne Mining Company suffered an operating loss for the year 1955 in the amount of $9,454.03; for the year 1956, the sum of $39,965.52; for the year 1957, $14,234.09, and for the first nine months of the year 1958 an operating loss of $5,657.87.

(115) Osborne Mining Company is presently selling its output for prices higher than it realized during the years 1952 and 1953. The price per ton has been as follows:

1952	$3.501	1955	$3.561
1953	$3.511	1956	$3.678

(Plaintiffs say that 1954 is not a representative year to determine profits because they lost considerable time of production work in moving from Black Star property to Gatliff and Packard properties.)

If it had been able to ship on the Georgia Power contract in 1957, it would have received $3.68 per ton. As-

of the time of trial, November, 1958, it would have received $3.90 per ton for all tonnage shipped on the Tampa Electric Company contract, and had it been produced Osborne Mining Company could have shipped up to 350,000 tons on that contract during the year 1958. In 1959 at this same price on that contract it could have shipped, if produced, 700,000 tons, and thereafter on that same contract it could ship, if produced, 700,000 tons and above.

(116) The preponderance of the evidence shows that mining conditions on the Packard and Gatliff tracts were as favorable for profitable operations as those on properties mined by Osborne in 1950-53, and there is substantial evidence that the coal reserves on said properties are approximately 50,000,000 tons.

(117) The prospects were that the working force of employees which Osborne Mining Company had built up over a period of years could have been maintained substantially intact and others could have been added for the usual turnover in employees, and still others added to increase the over-all force, had there been no interference by the union in 1954 and thereafter.

(118) The Osborne Mining Company had newer and better equipment while on the Packard and Gatliff property than it had in 1950 through 1953, and had the financial ability to add and would have added more and larger equipment had there been no interference.

(119) The preponderance of the testimony showed that the operating costs would not have increased as much per ton since 1953 as has the sales price of the coal produced. If the operating conditions on the two leaseholds had not been interfered with by union activities, Osborne Mining Company's profit per ton should have been as much as the profit per ton in 1950 through 1953.

(120) The principal revenues of the International union are dues of its members of $4.25 per month, $1.25 of which is remitted to the local union; $1.00 to the district, and $2.00 to the International.

There is an initiation fee of $50.00, $20.00 of which is retained by the local and $30.00 remitted to the International.

On July 1, 1956, the International possessed cash and securities of $24,601,409.24. (Exhibit P-21.)

(121) In 1954 the International and some of its members in Kentucky and Tennessee conspired to force Osborne Mining Company to recognize the union as the exclusive bargaining agency or to cease its operations on the Gatliff and Packard leaseholds, and to accomplish that objective the International and its members wrongfully interfered with the mining company's operations by continual harrassment of its employees, the employees of its sub-lessees and all parties who hauled its coal or that of its sub-lessees from the mines to the tipples. Acts of violence and threats of violence, created fear in the area where Osborne Mining Company operated which caused many of its key employees to discontinue work as well as the employees of its sub-lessees and the truck haulers who hauled its coal.

(122) Plaintiff Osborne Mining Company has suffered compensatory damages in the amount of $165,000.00 as a proximate result of the wrongful interference by the defendant International with its operations.

The wrongful interference consisted in the main of threats, intimidation, acts of violence, the creation of a reign of terror and other acts which have heretofore been found to be both primary and secondary in nature and

in violation of Title 29, U. S. C. A., Section 187, and in violation of the common law of Tennessee.

(123) Amos & Love Coal Company has suffered compensatory damages in the amount of $35,000.00 as a direct and proximate result of the wrongful acts of the defendant International set forth in Finding 122.

(124) Osborne and Amos, doing business as a partnership, are not entitled to recover from the defendants the claimed 10 cents per ton as an over-riding royalty for each ton of coal mined on the leaseholds by Osborne Mining Company and its sub-lessees, for the reason that any rights or benefits under the claimed contract were waived by them. Payments were not made to them by the Osborne Mining Company and they did not assert any lien against its property to insure such payment. The mining company did not list as an obligation this item in its income tax returns.

Conclusions of Law.

(1) The Court has jurisdiction under the Labor Management Relations Act of 1947, as amended, 29 U. S. C. A., Section 141, et seq., particularly 187 (A) (1) and 187 (B). The substantial cause of action asserted in the complaint under the federal law and established by the evidence, gives the Court jurisdiction of the common law cause of action.

(2) The service of process in these suits is good and sufficient process upon the defendant International union.

(3) The organizers, Ed Daniel and Taylor Maddox, and Albert Pass, secretary-treasurer of District 19, were agents of the defendant International acting within the scope of their employment and in accordance with customs and

practices within the union and the defendant International is responsible for their acts. Patton v. UMW, 211 F. 2d 742; Clayeraft v. UMW, 204 F. 2d 601; UMW of A v. Meadow Creek Coal Co., Inc., 6th Circuit, decided January 21, 1959.

(4) The purpose of the union in their activities in the Jellico area during the periods of time material to these suits, was to induce or encourage the secondary employees of the truck haulers, coal-mining employees of sub-lessees of Osborne Mining Company, to engage in a concerted refusal to work in order to force Osborne Mining Company to sign a union contract or to force it to discontinue its operations on the Packard and Gatliff leaseholds. Schauffler v. United Association of Journeymen, 3rd Circuit, 230 F. 2d 572; NLRB v. Denver Building and Construction Trade Council, 10th Circuit, 193 F. 2d 421; International Brotherhood of Teamsters, Local 657, 115 NLRB, No. 155 NLRB Decisions, 8811 Paragraph 53,710; NLRB v. Wine, Liquor and Distillery Workers, 178 F. 2d 584; NLRB v. Denver Building and Construction Trade Council, 341 U. S. 675.

(5) The principal activities of the union in Jellico were secondary activities as distinguished from primary activities. NLRB v. International Rice Milling Co., 341 U. S. 665, may be differentiated from the cases under consideration. See NLRB v. Denver Building and Construction Trade Council, 341 U. S. 675; International Brotherhood of Electrical Workers v. NLRB, 341 U. S. 695, and Retail Fruit and Vegetable Clerks Union v. NLRB, 9th Circuit, 249 F. 2d 591.

(6) The truck owners and sub-lessee mine operators who employed the secondary employees were neutral employers and not allies. The truck haulers and sub-lessees were independent contractors and inducement or encour-

agement for concerted action against their employees was a secondary boycott. See 29 U. S. C. A., Section 152 (3), for definition of the term "employee" which provides that an employee shall not include independent contractors. See House Report on Education and Labor to 80th Congress, 1st Session, which deals with independent contractors. House Reports, 80th Congress, 1st Session, Miscellaneous, Vol. 2, p. 18.

Prior to the amendment the National Labor Relations Board had held that truck haulers who hauled coal exclusively for one employer was considered an employee of that employer. See Matter of A. N. Green, 49 NLRB 146. Since the amendment the Board has held uniformly that persons who own trucks who haul exclusively for one employer but who hire and fire their own employees are considered independent contractors, thus their employees are considered secondary employees under the Taft Hartley Act. Robert F. Dwyer et al., dba Clackama Logging Co., and Guy Keller, Frell C. Zink, an individual, Local 5-40, International Woodworkers of America, CIO, 113 NLRB No. 27, Case No. 36-RD-81, 7-21-55 (this case involved a truck hauler of logs); Roy O. Martin Lumber Co., Inc., International Woodworkers of America, CIO, 83 NLRB No. 107, Case No. 15-RC-79, 5-18-49; and Local No. 20, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (AFL, CIO), et al., and National Cement Products Co. of Toledo, Ohio, 115 NLRB No. 206, Case No. 8-CC-37, 5-10-56 (this case involved a truck hauler of blocks).

(7) International and District 19 of the United Mine Workers of America are responsible for the activities which damaged Osborne Mining Company. 29 U. S. C. A., Sections 185 and 187. International L. & W. Union v. Hawaiian Pineapple Co., 226 F. 2d 875; UMWA v. Patton, 4th Circuit, 211 F. 2d 742; Clayeraft Co. v. UMWA, 6th

Circuit, 204 F. 2d 600; United Brotherhood of Carpenters and Joiners of America v. U. S., 330 U. S. 395, and UMW of A v. Meadow Creek Coal Co., Inc., supra.

(8) Osborne Mining Company is entitled to recover substantial compensatory damages for injury to its business because of the secondary boycott activity of the union and because of wrongful interference with its business. 29 U. S. C. A. 187 (B); UMWA v. Patton, supra; Donelly v. Jackson Brothers, 2 Tenn. CCA (Higgins) 408; Hagan v. Trust Co., 124 Tenn. 93; Summers & Lewis v. Sanderson, 7 Tenn. App. 624; Jennings v. Lamb (Tenn. Supreme Court, Dec. 6, 1956), 296 S. W. 828; 15 Am. Juris., pages 571 and 573, Damages, Sections 155 and 157, and UMW of A v. Meadow Creek Coal Co., Inc., supra.

(9) The International is responsible for the acts of its agents and representatives under the common law principles of principal and agent and master and servant. Brumley v. Chattanooga Speedway & Motordrome Co., 138 Tenn. 534; United Construction Workers v. Laburnum Construction Corp., 347 U. S. 656, and UMW of A v. Meadow Creek Coal Co., Inc., supra; UMWA v. Patton, supra.

(10) Love & Amos Coal Company are entitled to compensatory damages sustained as a proximate and direct result of the wrongful acts of the defendants. 29 U. S. C. A. 187 (B); 15 Am. Jur., page 473, Damages, Section 67; United Brick & Clay Workers v. Deena Artware, 6th Circuit, 198 F. 2d 637; Hagan v. Trust Co., supra; City of Atlanta v. Chattanooga Foundry & Pipe Works et al., 6th Circuit, 127 F. 2d 23, affirmed in Chattanooga Foundry & Pipe Works v. City of Atlanta, 203 U. S. 390.

(11) Osborne Mining Company has shown to a certainty that it sustained damages by reason of the wrongful acts of the defendants, and the fact that the amount of damages cannot be ascertained with certainty does not pre-

clude recovery. Story Parchment Co. v. Patterson Parchment Paper Co. et al., 282 U. S. 555, 563.

(12) Profits from a business that is contemplated are not allowable, but profits may be allowable from an established business if they are proved with reasonable certainty. Baumer v. Franklin Distilling Co., 6th Circuit, 135 F. 2d 384.

(13) The material facts which support the Osborne Mining Company's secondary boycott action under 29 U. S. C. A. 187, also support its action under the common law.

The secondary boycott claim and the common law claim based on the unlawful conspiracy are not separate causes of action but are simply different grounds to support a single cause of action, the cause of action accrues by reason of International's violation of the mining company's right to be free from wrongful interference in its business.

The Court has jurisdiction of the secondary boycott claim based on the federal law and also the claim of unlawful conspiracy to injure the Osborne Mining Company's business under the doctrine of Hurn v. Oursler, 289 U. S. 238; UMW of A v. Meadow Creek Coal Co., Inc., supra, and United Construction Workers v. Laburnum Construction Corp., supra.

(14) By reason of the wanton and wiliful conduct of the defendants in defiance of law and order, and their willful and intentional unlawful interference with Osborne Mining Company's business, the Court is of the opinion that the Osborne Mining Company is entitled to recover, in addition to compensatory damages, punitive damages in the amount of $50,000.00. See International Union, United Automobile, Aircraft and Agricultural Implement Workers of America et al. v. Russell, 356 U. S. 634, pages 640 and 641, and UMW of A v. Meadow Creek Coal Co., Inc., supra.

Present order in conformity with these findings and conclusions.

In the United States District Court
for the Eastern District of Tennessee,
Northern Division.

Osborne Mining Company, Inc., et al.,

versus

United Mine Workers of America et al.

} Civil Action No. 3166.

Final Judgment of District Court.

The above entitled cause, together with cause Number 3167, Love & Amos Coal Company v. United Mine Workers of America et al. came on for trial before the Court, sitting without a jury, and the Court having heard all of the evidence, the argument of counsel and having fully considered the same, together with the briefs submitted by the respective parties, has filed its Findings of Fact and Conclusions of Law and based upon such Findings of Fact and Conclusions of Law doth adjudge and decree that the plaintiff, Osborne Mining Company, Inc., is entitled to have and recover of the defendants, United Mine Workers of America and United Mine Workers of America, District 19, compensatory damages in the sum of One Hundred Sixty-Five Thousand Dollars ($165,000.00) and also to have and recover of said defendants, United Mine Workers of America and United Mine Workers of America, District 19, punitive damages in the additional amount of Fifty Thousand Dollars ($50,000.00), together with interest on both amounts from and after the date of entry of the judgment. As to the claims of the plaintiffs, John H. Amos and Clifford J. Osborne, the suit is dismissed and

judgment is rendered as to such claims in favor of the defendants.

Confirming the Court's ruling during the course of trial, the cause is dismissed as to the individual defendants, Dude Link, Dan Paul, Ike Bowlin, John Link, George Smith, Ed Burress, Louis Siler, Spencer Douglas, Crit Creekmore and Jim Elliott, without prejudice to the service of binding and effective process on the defendant, United Mine Workers of America and the defendant, United Mine Workers of America, District 19, by process having been served on any of said individual defendants as representatives of a class consisting of all Members of the defendant union.

It is, accordingly, Ordered, Adjudged and Decreed that the plaintiff, Osborne Mining Company, Inc., have and recover of the defendants, United Mine Workers of America and United Mine Workers of America, District 19, the aforesaid total sum of Two Hundred Fifteen Thousand Dollars ($215,000.00), together with all the costs of the cause, for all of which execution will issue if necessary.

APPENDIX II.

OPINION OF COURT OF APPEALS.

Nos. 13,872, 13,871, 13,874 and 13,873.

United States Court of Appeals
for the Sixth Circuit.

UNITED MINE WORKERS OF AMERICA AND UNITED MINE WORKERS OF AMERICA, DISTRICT 19,
Appellants,

vs.

OSBORNE MINING COMPANY, INC.,
Appellee.

OSBORNE MINING COMPANY, INC.,
Appellant,

vs.

UNITED MINE WORKERS OF AMERICA AND UNITED MINE WORKERS OF AMERICA, DISTRICT 19,
Appellees.

UNITED MINE WORKERS OF AMERICA AND UNITED MINE WORKERS OF AMERICA, DISTRICT 19,
Appellants,

vs.

LOVE AND AMOS COAL COMPANY,
Appellee.

LOVE AND AMOS COAL COMPANY,
Appellant,

vs.

UNITED MINE WORKERS OF AMERICA AND UNITED MINE WORKERS OF AMERICA, DISTRICT 19, *Appellees.*

APPEAL from the United States District Court for the Eastern District of Tennessee, Northern Division.

Decided June 7, 1960.

Before: WEICK, Circuit Judge, THORNTON and KENT, District Judges.

WEICK, Circuit Judge. In the District Court Osborne Mining Company, Inc., a Kentucky corporation, sought to

recover compensatory and punitive damages from the United Mine Workers of America and United Mine Workers of America, District No. 19[2] alleging that the defendants induced and encouraged employees of neutral employers to engage in a concerted refusal in the course of their employment to mine and transport coal, for the purpose of forcing Osborne Mining Company to recognize and bargain with United Mine Workers of America as the representative of its employees; that U. M. W. had not been certified as the representative of Osborne's employees under the provisions of Title 29, U. S. C. A., § 159; that said Unions unlawfully interferred with its business of strip mining coal and purchasing coal from others for sale. It claimed that the conduct of the Unions was wilful and malicious and constituted a violation of Section 303 of the Labor Management Relations Act, 1947, 29 U. S. C. A., 187 (a) (1) and (2) and § 187 (b) and also a violation of the common law of the State of Tennessee.

Love & Amos Coal Company was a Tennessee corporation engaged as a coal sales agency. It sold Osborne's coal on a commission basis of twenty-five cents a ton. It filed a separate action against the defendants to recover compensatory and punitive damages for interference with its coal selling business in consequence of the alleged wrongful acts of said defendants as aforesaid which violated the Labor Management Relations Act and the common law of Tennessee.

The two actions were tried together by the District Judge without a jury. The trial lasted over three weeks. The transcript of testimony comprises about 3600 pages and several hundred pages of exhibits. The Court adopted 124 Findings of Fact and 14 Conclusions of Law and found for Osborne Mining Company rendering a judgment in its

[2] The Unions will be referred to herein either as defendants, U. M. W. or District No. 19. Osborne Mining Company, Inc. will be referred to as plaintiff or Osborne and Love & Amos Coal Company as Love & Amos.

favor for $165,000 compensatory damages and $50,000 punitive damages. The Court also found in favor of Love & Amos and rendered judgment for compensatory damages in the amount of $35,000.

The defendants have appealed from both judgments in Case Nos. 13,872 and 13,874. Osborne and Love & Amos have filed separate appeals in Case Nos. 13,871 and 13,873 claiming that the amounts of the judgments in their favor were inadequate.

We will first take up the appeals in Case Nos. 13,872 and 13,871 relating to the Osborne judgment. Many questions, chiefly factual, are presented by defendants. The facts of this case, as found by the District Judge, present a frightening picture of violence and intimidation. To better understand the questions presented a very brief outline of the area within which the acts took place is helpful.

Osborne's mines were located to the northeast of Jellico, Tennessee. The coal mined there was trucked into Jellico where it was unloaded at a coal tipple for shipment by rail to its ultimate destination.

The defendants first urge that they did not "induce or encourage" employees of an employer other than plaintiff to engage in "a concerted refusal" to compel plaintiff to bargain with U. M. W. in violation of Section 303 of the Act. They claim that the Jellico tipple was the primary situs of the labor dispute and that the activities complained of occurred at or in the vicinity thereof. Thus, any occurrences there are claimed to have been primary activity, and not secondary, so as not to be violative of Section 303. They rely on the decision of the Supreme Court in *N. L. R. B. v. International Rice Milling Co.*, 341 U. S. 665 (1951).

It was undisputed that U. M. W. had not been designated as a representative of Osborne's employees under the provisions of Title 29, U. S. C. A., § 159.

In his findings of fact relating to this issue the Trial Judge found substantially as follows: Osborne, at the time of the grievances complained of, was engaged exclusively in strip mining and its employees performed the work incidental thereto. Osborne subleased part of its mining tracts to contractors who engaged in underground mining and sold the coal extracted therefrom to Osborne. These underground mine operators had their own employees. Osborne engaged truck owners, some of whom drove their own trucks while others had employees driving, to haul the coal produced from the strip and underground mining operations to the tipple which Osborne had constructed at Jellico. There was no common ownership between Osborne and the sublessee mine operators and the truck owners, and Osborne did not control them or their employees. Osborne had only two employees at the tipple.

Previous to the time of the grievances complained of, namely, in 1951, 1952 and 1953, Osborne was engaged in strip mining near Corbin, Kentucky. A district representative of District 19 attempted to induce Osborne to sign a collective bargaining agreement with U. M. W. at that time. When this failed, a picket line was established in 1953 at Osborne's place of business in Kentucky which drastically interferred with Osborne's business and also prevented independent truckers from hauling Osborne's coal. Osborne obtained a state court injunction restraining the picketing. The action was dismissed in November, 1953 by an order which recited that counsel for District 19 had advised the District that it was unlawful under Kentucky laws to picket for the purpose of obtaining a union contract unless the Union represented a majority of the employees and that the Union wished to obey the law by withdrawing pickets until such time as it became legal.

Clifford Osborne, President of the mining company, had been pressured on more than one occasion to sign a union contract and company employees had been solicited at their

homes and at other places by the Union in an unsuccessful effort to get them to join the Union.

In 1954 Osborne secured new mining leases known as the Packard and Gatliff leases. The Packard lease comprised about 7,000 acres of land situated northeast of Jellico, Tennessee. The Gatliff lease involved 17,000 acres of land located in Whitley and Knox Counties, Kentucky, which adjoined the Packard tract on the east. Osborne started operations on its new leasehold in the early part of July, 1954. Shortly after operations commenced 20 to 30 Union men visited the strip pit of Osborne, which was the work situs of practically all of its employees, and asked the employees to join the Union. They told the employees that if they did not join the Union, they, the Union members, would return to the pit and the situation would not be peaceful.

On the morning of July 23, 1954, a riotous group of 50 to 100 men visited the Osborne tipple at Jellico. Two Union organizers, Taylor Maddox and Ed. Daniel were present. Maddox asked Osborne to sign a union contract. There was testimony to the effect that Maddox stated to Mr. Osborne that the Union members would take care of themselves and that the trucks would not dump their coal until Osborne signed the contract. While Maddox denied making this statement he did admit that he asked Osborne to sign the contract on this occasion and that he explained to Osborne why the men were there.

One unruly group attempted to stop a truck loaded with coal from entering Osborne's premises. The group blocked the path of the next truck and stopped it near the scale house. One or more of the group jerked the door of the cab of the truck and threatened the cab driver. Daniel failed to do anything to calm the men or disperse the group. Mr. Osborne requested the group to disperse and to permit the company to carry on its operations and he talked for sometime with Maddox but was unsuccessful in his appeals to get the group dispersed.

A number of other trucks came into Jellico for the purpose of unloading coal at the tipple but could not gain access thereto because of the violent attitude of the group. The drivers, including the employee drivers, parked their trucks at various places on the streets and parking lots while Mr. Osborne was carrying on his conversation with Maddox and attempting to restore order.

Neither Maddox nor Daniel made any attempt to persuade the group to disperse so that coal could be unloaded. An unsuccessful attempt was made to obtain the help of the police.

Osborne's lawyer appeared and instructed the truck drivers to take their loads of coal to the company's tipple at Faber, Kentucky. The coal had been scheduled for shipment to the Tennessee Valley Authority but was shipped from Faber on some other order.

On the following day an injunction was obtained by Osborne and some of the truck drivers in the state court at Jacksboro, Tennessee, restraining riotous activities of the group of men. The suit was dismissed on December 19, 1956, after the Packard and Gatliff leases were surrendered by Osborne.

On August 2, 1954, as trucks of coal entered Jellico they were stopped by groups of men in the streets and the drivers were arrested by a deputy sheriff named Spencer Douglas, who was a member of the Union, on warrants charging them with operating trucks with improper equipment and without a Tennessee license. The charges against the drivers were dismissed by the General Sessions Court of Campbell County upon the statement of the prosecution witness that he was told by some one to swear out a warrant. The District Court said that this was a serious abuse of legal process inspired by Union activity. For a number of months thereafter crowds of men assembled around the tipple premises interferring with truck drivers as they

came into the tipple. It was found that these activities interfered with plans of Osborne to secure a large number of subleases for underground operations on the new leasehold.

U. M. W. was attempting at the same time to organize other mines in the Jellico area. Its organizer Ed. Daniel sought to obtain a contract from the Maiden mine, 4 miles from Jellico. A picket line was placed at the pit. Daniel was observed driving from Jellico to the pit. A truck driver was hauling coal from the pit when two men in a car tried to stop him and fired pistol shots into his truck as he passed. The damage to the truck was repaired at Jellico where Osborne's drivers learned of the mine shooting incident.

On April 6, 1955, a group of two or three hundred men assembled at Jellico. They stopped trucks carrying coal into Jellico and dumped the coal in the streets and on the parking lots. They forced one of the employee drivers hauling coal to Osborne to dump his truck and the truck driver was assaulted by one or more of the riotous group. Another driver hauling Osborne coal was chased on foot through the Osborne tipple and his truck was dumped on a nearby lot by the mob. One or more members of the group forced an elderly truck driver to unload coal in the street by hand, although the truck was equipped with a mechanical dumping mechanism. Spencer Douglas who was a member of the group on July 23, 1954, was also a member of this group.

The group left Jellico and visited Newcomb, Tennessee, about four miles away, the site of the Boots and Cox Mine, also a non-union operation. Boots, a man of 65 years of age was severely beaten by the mob. Cox was also beaten and kicked. The mine was closed for about a week, when the operators called Daniel who came to their office and a contract was signed. The mine was reopened and Boots and Cox had no more trouble.

In February or March, 1955, two men went to the strip pit of Frost & Parrish near Newcomb and demanded that they sign a union contract. One of the men was armed. Mr. Frost told them he would talk only with Daniel. Shortly thereafter Daniel appeared and asked Frost if he wanted to sign a contract. Frost refused. On April 6th the same mob that had visited Jellico and the Boots and Cox mine visited the Frost & Parrish mine and assaulted both Frost and Parrish. They also attacked employees in the mine, leaving them prostrate in a muddy pool at the bottom of the pit.

Groups of men came into Jellico on April 7, 1955. The Board of Aldermen of Jellico passed a resolution requesting assistance from the Governor of Tennessee.

The mob visited the non-union Van Huss mine, between La Follette and Jellico, on April 11, 1955 where they attacked Van Huss and buried him under a pile of dirt. They forced his employees to beat and curse him. His clothes were stripped off and he was whipped and then thrown into a pool of water where he was doused up and down. One of his employees was treated in the same manner. Several months previously Daniel had tried to get Van Huss to sign a union contract. Lowe, a member of the mob, referred to Daniel.

As Clifford Osborne was driving to Jellico on April 13th, he saw a long caravan of cars approaching. He turned around and the cars at the head of the caravan chased him down the Cave Gap road into a hollow where they lost him. The men in the caravan searched the pit for Osborne and found no men working there, as they had fled into the woods.

Daniel, Maddox and another Union representative named Pass made union speeches in Jellico on April 11th. They urged their listeners to keep scab coal out of Jellico.

On April 28, 1955 several hundred men returned to Jellico and visited the place where the trucks that haul

Osborne coal were kept overnight. They stood around pointing their fingers and evidencing a belligerent attitude toward the truck drivers assembled at the State Line Service Station. Daniel was seen talking to a group of men a short distance away. The men got in their car and proceeded to parade in front of the service station, driving their cars back and forth in an obvious effort to intimidate the onlooking truck drivers.

Groups of men continued to occupy the streets and sidewalks in front of the Osborne tipple during the ensuing months of 1955, until winter came. These groups would sometimes form picket lines, point their fingers, block the driveway and display hostility toward the truck drivers.

During April, 1955 and for months thereafter large numbers of nails were found on roads used by trucks hauling Osborne coal which roads were also used by miners going to the underground mines and strip pits. The District Judge found that the scattering of nails was inspired by union activities.

In the fall of 1955 and spring of 1956 other efforts were made to intimidate the truck drivers and stripping crews. These included the burning of haystacks at night in the plain sight of the stripping crew, shooting at a lone guard at the stripping pits, displaying of mysterious lights in the woods around the pits.

The Court concluded that the acts of violence and intimidation were intended to and did create a reign of terror in the Jellico area, in order to promote the U. M. W. organizing campaign; that said acts were intended to and did induce and encourage employees of employers (other than Osborne) to engage in a concerted refusal to mine and haul coal, the objective being to force Osborne to bargain with U. M. W. as the representative of its employees.

While the form of persuasion adopted in this case was not conventional, it is clear that the words of the statute (29 U. S. C. A., § 187a) "induce" and "encourage" include every form of influence and persuasion whether by appeals to reason or coercion with force and violence. *International Brotherhood of Electrical Workers* v. *N. L. R. B.*, 341 U. S. 694 (1951).

The activities of the defendants were not directed against a single neutral party as in *N. L. R. B.* v. *International Rice Milling Co.*, 341 U. S. 665 (1951), but to many neutral employers and their employees. They were designed to and did effect a concerted action on the part of the employees and neutral employers not to mine or haul coal for Osborne. Cf. *Schauffler* v. *United Association of Journeymen*, 230 F. 2d 572, 574 (C. A. 3, 1956); *N. L. R. B.* v. *Denver Building & Construction Trades Council*, 193 F. 2d 421 (C. A. 10, 1952).

All but two of Osborne's employees were employed in the strip mines. It would seem clear that the labor dispute in this case involved the mining employees of Osborne and that the situs of the dispute was the pit where the miners were working and not at the coal tipple in Jellico, Tennessee, where only two of Osborne's employees were working.

In any event, the trial court found that U. M. W. did not confine its activities against the secondary employees to the tipple, or any picket line at those premises, but were spread throughout the area wherever the secondary employees could be found. The statute proscribes certain activities irrespective of where they take place. Even in picketing at the premises of a primary employer the union must exercise its rights consistent with the right of neutral employers to remain uninvolved in the dispute. *Retail Fruit & Vegetable Clerks Union* v. *N. L. R. B.*, 249 F. 2d 591 (C. A. 9, 1957); *United Brick & Clay Workers* v. *Deena Art Ware, Inc.*, 198 F. 2d 637, 643 (C. A. 6, 1952).

In each of his findings of fact the trial court cited references to the record in support thereof.

This Court is bound by the findings of fact of the trial court unless they are clearly erroneous and it appears that the court has made a mistake. *Rule 52a, Federal Rules of Civil Procedure; McAllister* v. *United States*, 348 U. S. 19, 20 (1954); *United States* v. *U. S. Gypsum Co.*, 333 U. S. 364, 395 (1948).

A review of the evidence with respect to this issue convinces us that the findings of fact of the trial court were not clearly erroneous.

U. M. W. contends that neither the truck drivers nor the sublessee mine operators were "neutral" employees within the meaning of the Act; that their relationship was not that of at arms-length which usually exists between employers and there was not a complete interdependence of operations. It relies chiefly on *Local 24, International Brotherhood of Teamsters* v. *N. L. R. B.*, 266 F. 2d 675 (C. A., D. C., 1959).

This is essentially a question of fact. As before stated, the trial court found that Osborne did not control either the secondary employers or their employees. The truck owners did not haul exclusively for Osborne.

While prior to the Taft-Hartley amendments of 1947, the employees of the lessee mine operators and truckers would have been considered as employees of Osborne (In the Matter of A. M. Greene, 49 N. L. R. B. 146), the effect of the amendments is not to so regard the employees of independent contractors. 29 U. S. C. A., § 152 (3).

In the *Teamsters* case, supra, relied upon by defendants, the truck owners' (lessors') employees were deemed to be employees of the transportation company (lessee) because of the control exercised over them by the latter. The transportation company (lessee) was not an independent contractor. As stated by the court:

> The many tiny strands of Ace (lessee) control over these drivers cannot be extricated from the total fabric of mutual obligation. Those strands are clearly part of the pattern of the employer-employee relationship.

In the case at bar the strands of control referred to in the *Teamsters* case were not present, and the evidence supports the findings of the trial judge as to the existence of the independent contractor relationship.

Defendants assert that the District Court did not have jurisdiction to determine whether the evidence material to the federal cause of action also established a violation of the common law of Tennessee.

The case of *United Mine Workers of America* v. *Meadow Creek Coal Co.*, 263 F. 2d 52 (C. A. 6, 1959), cert. denied 359 U. S. 1013 (1959), supports the jurisdiction of the District Court to consider and determine the common law claim where it is joined with the federal claim and is supported by the same evidence. *Hum* v. *Oursler*, 289 U. S. 238 (1933). We are asked to reconsider our decision in *Meadow Creek*. We feel this case was correctly decided. Judge Martin in his opinion said:

> . . . We think this case presents only a single cause of action; that the claim of secondary boycott and unlawful conspiracy are not separate causes of action, but merely different grounds to support a single cause of action.

The fact that the activities of U. M. W. were directed against both primary and secondary employers and employees does not oust the court of jurisdiction. The acts of the Unions were so interrelated that except in a very few instances it would be virtually impossible to separate those directed against a primary as distinguished from a secondary party. The primary activities could certainly not be regarded as an efficient intervening cause which would operate to relieve the defendants of responsibility

for the full damage caused by their violation of federal law."

Defendants assert that the District Judge erred in admitting evidence of incidents taking place at other mines to establish the responsibility of defendants for incidents occurring at Osborne's operations. They cite *Massengill v. Shadden*, 48 Tenn. 357, as illustrative of the rule contended for. In that case, the Court held that evidence to the effect that the defendant had taken two horses from somebody else on the night in question did not establish that he had taken plaintiff's mare. In our case the factual situation is somewhat different.

The incidents concerning the other mines were in the area of Osborne's operations and were, as found by the trial court, in connection with U. M. W. efforts to organize all of the mines in the Jellico area. They were taking place at or about the time of the incidents directed against Osborne and the secondary employers and employees. In fact, in some instances, the same groups which committed acts of violence at Jellico left and committed acts of violence against other mine owners in the area.

Due to the close proximity of all of these mines to the Jellico tipple there can be no question that not only Osborne's employees, but also the secondary employers and employees knew all about the incidents occurring at the other mines. They might reasonably regard these incidents as an indication of what might happen to themselves if they persisted in mining or hauling coal for Osborne. Cf. *N. L. R. B. v. Local 140, United Furniture Workers*, 233 F. 2d 539 (C. A. 2, 1956); *N. L. R. B. v. United Mine Workers of America*, 195 F. 2d 961 (C. A. 6, 1952). The incidents with respect to other mines constituted a form of influence and persuasion coming within the scope of *International Brotherhood of Electrical Workers v. N. L. R. B.*, 341 U. S. 694 (1951), and in our judgment the evidence was admissible.

We are of the opinion, however, that even without the evidence of the incidents at other mines, the judgments are supported by sufficient evidence.

We think the evidence supports the Findings and Conclusions of the District Judge that the defendants were responsible under the common law doctrine of respondeat superior for the acts of their agents and servants. *United Construction Workers* v. *Laburnum Construction Corp.*, 347 U. S. 656 (1954); *United Mine Workers* v. *Meadow Creek Coal Co.*, supra; *Lewis* v. *Benedict Coal Corp.*, 259 F. 2d 346, 352 (C. A. 6, 1958); *Brumlow* v. *Chattanooga Speedway & Motordrome Co.*, 138 Tenn. 534 (1917).

The Court found that the group creating the reign of terror in the Jellico area was furthering the organizational efforts and interests of the International Union; that the Union organizers, Daniel and Maddox, were not only direct employees of District No. 19, but in fact and in law were representatives of the International; that Daniel and Maddox worked with the groups of men who created the reign of terror in the Jellico area and in so doing were furthering the interests of the International; that the defendants with full knowledge of the facts took advantage of these acts of violence to get new contracts and were benefited by the dues of new members; that the International encouraged and promoted the organizational efforts of District No. 19 and its representatives and members and advanced to it large sums of money during the period in question for these purposes; that it came to the aid of members of the mob and defended them in the criminal cases resulting from the mob's activities.

The Court also determined from the evidence that District No. 19 was not a separate autonomous body but a mere agent of the International Union. Cf. *United Mine Workers of America* v. *Meadow Creek Coal Co.*, supra.

The evidence, in our judgment, was sufficient to establish liability on the part of the defendants for destruc-

tion of Osborne's business. The rule in *United Brotherhood of Carpenters & Joiners* v. *U. S.*, 330 U. S. 395 (1947), which interpreted Section 6 of the Norris-LaGuardia Act (29 U. S. C., § 106), does not immunize the unions from the activities shown here. There the court recognized that the grant of authority to an officer of a union to do certain things may well be sufficient to make the union liable and that "the custom or traditional practice of a union can also be a source of actual authorization of an officer to act for and bind the union." id., p. 410.

The remaining question in the Osborne appeals relates to damages. The statute provides for the recovery of damages by whoever is injured by reason of the violation of Section 303a. 29 U. S. C. A., § 187 (b). Osborne claims that the award of compensatory damages was inadequate and asks this Court to increase the award. U. M. W. asserts that the award was excessive and that Osborne should recover only nominal damages or at least that a remittitur be ordered.

The trial judge awarded Osborne $165,000 for compensatory damages. He made findings of fact with respect to the following special items:

Damages paid T. V. A. for failure to fulfill contract	$ 16,000.00
Cancellation of Gatliff leases	2,500.00
Cancellation of Packard leases	500.00
Minimum royalty—Gatliff lease (1955)	15,000.00
Minimum royalty—Gatliff lease (1956)	12,413.60
Operating loss (1955)	9,454.03
" " (1956)	39,365.52
" " (1957)	14,234.09
" " (1958—9 months)	5,657.87
	$109,725.11

Subtracting the total of the special damages from the award of $165,000 leaves a figure of $55,274.89 which can

be said to be attributable to loss of profits during the five year period from 1955 to 1959.

To support the award for loss of profits the trial judge found that Osborne had an established business and that its net profits for the four year period from 1950 through 1953 for income tax purposes averaged $23,666.39 per year. The Court further found that except for the interference by defendants its profits for the five year period (1955-1959) would have been as great as in the preceding years (1954 was not considered a representative year).

Defendants attack the award of special damages as well as the profits. They claim that the evidence does not support the findings as to the special damages; that the Gatliff mine was not worked until 1956; that the failure to perform the T. V. A. contract was not attributable entirely to labor troubles; that Osborne had never produced sufficient coal to fulfill the T. V. A. contract prior to the labor trouble; that the workers employed by Osborne and the sublessees were paid substandard wages and that any contract entered into after November 25, 1944 would be subject to the Walsh-Healy Act (41 U. S. C., § 35 et seq.) which increased wages and reduced Osborne's profit thereby having the effect of removing T. V. A. as a possible customer; that the award of profits was too speculative; that Osborne's losses during the period in question were not entirely attributable to the labor dispute.

Osborne in its appeal claims that the trial court, because of its findings of fact, should have allowed it more compensatory damages. It asserts that the trial court should have increased its profits by eliminating expense deductions for depletion, depreciation, and bonus payments to officers and employees. These deductions were taken on its income tax returns and were apparently allowed by the Government. Osborne asks this Court to increase the award of compensatory damages.

The findings of the trial judge indicate the factors he took into account in allowing compensatory damages. He

resolved many disputed issues of fact. It has not been demonstrated to us that the Court made any mistake in his findings of fact relating to damages or that he applied the wrong rule of law. We think that under all the facts and circumstances of the case the Court was justified in making the award which he did, and we are not disposed to disturb it. The award of punitive damages was entirely within his discretion to make under the common law of Tennessee. *United Mine Workers* v. *Meadow Creek Coal Co.*, supra.

In a tort action involving unliquidated damages the amount of which cannot be determined to a mathematical certainty, it is not the function of the Court of Appeals to retry the case or fix the amount of damages according to its notions, but rather to examine the record to determine whether there is substantial credible evidence to support the findings of the trial court. *Atlantic Refining Co.* v. *Evans*, 251 F. 2d 277 (C. A. 5, 1958). We would not be "justified in modifying them unless satisfied they are outside the range of permissible or sane judgment." *Adventures in Good Eating, Inc.* v. *Best Places to Eat, Inc.*, 131 F. 2d 809 (C. A. 7, 1942).

In *Story Parchment Co.* v. *Paterson Parchment Paper Co.*, 282 U. S. 555 (1931), the Court said:

> Where the tort itself is of such a nature as to preclude the ascertainment of the amount of damages with certainty, it would be a perversion of fundamental principles of justice to deny all relief to the injured person, and thereby relieve the wrongdoer from making any amend for his acts. In such case, while the damages may not be determined by mere speculation or guess, it will be enough if the evidence show the extent of the damages as a matter of just and reasonable inference, although the result be only approximate. The wrongdoer is not entitled to complain that they cannot be measured with the exactness

and precision that would be possible if the case, which he alone is responsible for making, were otherwise.

Profits are recoverable where there is an established business and they can be proven with reasonable certainty. *Baumer v. Franklin Distillery Co., Inc.*, 135 F. 2d 384 (C. A. 6, 1943); *Roseland v. Phister Mfg. Co.*, 125 F. 2d 417, 420 (C. A. 7, 1942); *Jennings v. Lamb*, 201 Tenn. 1 (1956); *Hogan v. Trust Co.*, 124 Tenn. 93 (1910).

In the appeal filed in the *Love & Amos* case, No. 13,874, U. M. W. raised the important question as to whether the damages claimed by Love & Amos, not a party to the labor dispute, are too remote to be recovered under the Act, 29 U. S. C. A., § 187 (A) (1) and (2) and § 187 (b).

The labor dispute, in this case, it will be recalled was solely between U. M. W. and Osborne. U. M. W. was engaged in efforts to organize Osborne's employees and in connection therewith violated the Act by activities directed against secondary employers and employees for which we have held it must respond in substantial damages to Osborne.

Love & Amos was a sales agency and the agent of Osborne. It was not a coal producer or operator. It had acted not only to procure leases for Osborne, but also sold the coal which Osborne mined for which it was paid a commission of 25¢ a ton. The agency agreement between Love & Amos and Osborne was verbal. It claims that in consequence of the violation of the Act by U. M. W. Osborne was unable to mine and transport the coal on orders procured by Love & Amos and it is, therefore, entitled to the commissions which it would have earned if the orders had been filled. The District Judge agreed.

Love & Amos had no employees whom U. M. W. was attempting to organize, or for whom it was endeavoring to secure a collective bargaining agreement; U. M. W. did not

induce or encourage any of Love & Amos' employees to strike in order to compel Osborne to bargain with U. M. W.

The Act provides:

> Whoever shall be injured in his business or property by reason of any violation of subsection (a) may sue therefor in any district court of the United States . . . 29 U. S. C. A., § 187 (b).

No case interpreting this section on this point has been cited to the Court.

In *Deena Products Co. v. United Brick & Clay Workers of America*, 195 F. 2d 612 (C. A. 6, 1952), in a per curiam opinion, which dismissed an appeal because it was not timely filed, we were of the view that a parent corporation could not recover damages under the Act where its subsidiary was the primary employer and was involved in a dispute with a union which developed into a secondary boycott. There was no contract between the parent and subsidiary. In the present case there was a contract with Love & Amos.

In *United Brick & Clay Workers v. Deena Art Ware, Inc.*, 198 F. 2d 637 (C. A. 6, 1952), we held that the Act conferred a right of action upon the primary employer as well as a neutral employer who was damaged by the prohibited boycott.

Judge Miller, who wrote the opinion for the Court, pointed out that the construction given to analogous provisions of the Sherman Anti-Trust Act (15 U. S. C. A. 1-7) was pertinent citing *Chattanooga Foundry & Pipe Workers v. Atlanta*, 203 U. S. 390 (1906), and other cases.

Defendants relied on cases interpreting the anti-trust laws in which damages claimed by third parties were deemed too remote to permit recovery. *Melrose Realty Co., Inc. v. Loew's, Inc.*, 234 F. 2d 548 (C. A. 3, 1956),

certiorari denied 352 U. S. 518 (non-operating owner-lessor of motion picture theatre with percentage lease). This case followed the decision in *Harrison* v. *Paramount Pictures*, 115 F. Supp. 312 (D. C. E. D. Pa., 1953), aff'd 211 F. 2d 405 (C. A. 3, 1954). *See also*: *Martens* v. *Barrett*, 245 F. 2d 844 (C. A. 5, 1957) (sole stockholders of a corporation); *Productive Inventions, Inc.* v. *Trico Products Corp.*, 224 F. 2d 678 (C. A. 2, 1955), certiorari denied 350 U. S. 936 (patentee who had granted exclusive license to another); *Snow Crest Beverages, Inc.* v. *Recipe Foods, Inc.*, 147 F. Supp. 907 (D. C. Mass. 1956) (person having profitable relationship with party directly affected by violation of anti-trust laws).

In Trico Products, supra, the court said:

> Those harmed only incidentally by anti-trust violations have no standing to sue for treble damages; only those at whom the violation is directly aimed or who have been directly harmed may recover . . . Shareholders and officers of corporations as well as creditors and landlords have been held not to have standing to sue for treble damages . . . Undoubtedly, such persons suffer some financial loss when anti-trust violations are directed against the corporations in which they have an interest. But not every financial loss due to an anti-trust violation, however remote, gives a right of action. id., 679.

Love & Amos rely on the cases of *Congress Building Corporation* v. *Loews, Inc.*, 246 F. 2d 587 (C. A. 7, 1957), and *Steiner* v. *20th Century Fox Film Corp.*, 232 F. 2d 190 (C. A. 9, 1956), in which recovery was allowed to owner-lessors. It also relies on *Chattanooga Foundry & Pipe Workers* v. *Atlanta*, 203 U. S. 390 (1906), where a purchaser of pipe directly affected by a conspiracy between pipe producers was permitted to recover.

In *Congress Building* and *Steiner* the lessees were parties to the conspiracy. In *Chattanooga* the conspiracy

was directed at purchasers and plaintiff was one of the objects thereof.

In the present case, unlike the cited cases, Osborne was not a party to any conspiracy nor is there any claim that Osborne committed any wrong of any kind against Love & Amos. The theory of the complaint of Love & Amos against U. M. W. is that U. M. W. by its secondary boycotts destroyed Osborne's business and in consequence thereof Love & Amos were deprived of commissions which it otherwise would have earned under its contract with Osborne. In other words, U. M. W.'s violation of the federal law destroyed Osborne and Love & Amos were injured because of its contractual relations with Osborne.

For the wrongs which have been committed against Osborne, it has recovered compensation for all the damage to which it was legally entitled. It has been fully compensated for its actual losses and for the profits which it would have made. In addition, it has received an award for punitive damages.

Love & Amos contend that some of the activities of U. M. W. were directed at it; that the official journal of U. M. W., which was required reading at union meetings, contained critical articles with respect to the practice of T. V. A. in purchasing what it called non-union coal; that the malice which U. M. W. had toward Osborne was intensified in its attitude toward Love & Amos because of that concerns long relationship as the chief source of coal for T. V. A.; that statements were made on the picket line or on placards carried by the pickets which mentioned Love & Amos or which made disparaging remarks concerning Mr. Amos, individually, who was an officer of Love & Amos and also a principal of Osborne.

The unions explain that they were interested in the wages and working conditions of the miners. They were conducting an organizational campaign. They had the right of free speech which included the right to criticize an

agency of Government for awarding public contracts at prices which they claim did not permit the payment of fair wages to miners and resulted in substandard working conditions. They claim they had the right to display signs or placards so long as they told the truth.

In any event, it is not for these acts that Love & Amos seek recovery here. As heretofore pointed out Love & Amos' cause of action is based upon the destruction of Osborne's business by the unlawful activities of the unions and the damage it claims to have suffered is because of its contractual relationship with Osborne. This damage is incidental and too remote for recovery under federal law.

If Love & Amos were damaged as a result of any activities of defendants directed at it, an adequate remedy exists under state law. This is not the type of case contemplated by the Labor Management Act of 1947.

Jurisdiction cannot be sustained on the ground that, Love & Amos having failed in their federal cause of action, the District Court may nevertheless retain the case and administer the cause of action under the common law of the state. Cf. *Hum* v. *Oursler*, 289 U. S. 238 (1933); *Baltimore Steamship Co.* v. *Phillips*, 274 U. S. 316 (1927); *United Mine Workers of America* v. *Meadow Creek Coal Co.*, 263 F. 2d 52 (C. A. 6, 1959).

The failure of Love & Amos to recover here is not attributable to lack of supporting evidence. It was because it never had and could not assert any federally recognized cause of action or ground for recovery. Consequently, the analogy in *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469 (1940), applies. *Hunt* v. *Crumboch*, 325 U. S. 821, 826 (1944). The District Court had no jurisdiction of the Love & Amos action for violation of the common law of Tennessee.

The only question raised by Love & Amos in Case No. 13,873 is that the amount of the judgment in its favor

was inadequate. Since we have reversed its judgment in Case No. 13,874, this disposes of the question of damages.

It follows that the judgment in Case No. 13,872 is affirmed; judgment in Case No. 13,871 is affirmed; judgment in Case No. 13,874 is reversed and the cause is remanded to the District Court with instructions to dismiss the complaint and the appeal in Case No. 13,873 is dismissed.

Judgment of Court of Appeals.

(Filed June 7, 1960.)

Appeal from the United States District Court for the Eastern District of Tennessee.

This Cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Tennessee, and was argued by counsel.

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.

APPENDIX III.

Section 12 of H. R. 3020 as Found in Legislative History of the Labor Management Relations Act, Vol. 1, pp. 204-207:

"Sec. 12. (a) The following activities when affecting commerce, shall be unlawful concerted activities:

"(1) By the use of force or violence or threats thereof, preventing or attempting to prevent any individual from quitting or continuing in the employment of, or from accepting or refusing employment by, any employer; or by the use of force, violence, physical obstruction, or threats thereof, preventing or attempting to prevent any individual from freely going from any place and entering upon an employer's premises, or from freely leaving an employer's premises and going to any other place; or picketing an employer's place of business in numbers or in a manner otherwise than is reasonably required to give notice of the existence of a labor dispute at such place of business; or picketing or besetting the home of any individual in connection with any labor dispute.

"(2) Picketing an employer's premises for the purpose of leading persons to believe that there exists a labor dispute involving such employer, in any case in which the employees are not involved in a labor dispute with their employer.

"(3) Calling, authorizing, engaging in, or assisting

"(A) any sympathy strike, jurisdictional strike, monopolistic strike, or illegal boycott, or any sit-down strike or other concerted interference with an employer's operations conducted by remaining on the employer's premises;

"(B) any strike or other concerted interference with an employer's operations, an object of which is to

compel an employer to accede to featherbedding practices;

"(C) any strike or other concerted interference with an employer's operations, an object of which is (i) to compel an employer to recognize for collective bargaining a representative not certified under section 9 as the representative of the employees, or (ii) to remedy practices for which an administrative remedy is available under this Act, or (iii) to compel an employer to violate any law or any regulation, order, or direction issued pursuant to any law.

"(4) Any conspiracy, collusion, or common arrangements between competing employers to fix or agree to terms or proposed terms of employment of their employees, or to subject such terms or proposed terms of employment to common control or approval, not permitted as to their employees, or as to the representatives of their employees, with respect to the collective bargaining, concerted activities, or terms of collective bargains or arrangements of such employees.

"(b) Any person injured in his business, person, or property by an unlawful concerted activity affecting commerce may sue the person or persons responsible therefor in any district court of the United States having jurisdiction of the parties, without regard to the amount in controversy, and may recover the damages sustained by him as a result of such unlawful concerted activity, together with the costs of the suit, including a reasonable attorney's fee.

"(c) No provision of the Act of March 23, 1932, entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes', shall have any application in any action or proceeding in a court of the United States involving any activity defined in this section as unlawful.

"(d) A person who is found to have engaged in any activity herein defined as an unlawful concerted activity shall be subject to deprivation of rights under this Act to the same extent as a person found to have engaged in an unfair labor practice under section 8 (b) or 8 (c).

"(e) Except as specifically provided in this section, nothing in this Act shall be construed to diminish the right of employees to strike or to engage in other lawful concerted activities. No provision of this Act, and no order of any court issued hereunder, shall be construed to require any individual to perform labor or service without his consent."

APPENDIX IV.

Norris-LaGuardia Act.

29 U. S. C. 106, 47 Stat. 71: **Responsibility of officers and members of associations or their organizations for unlawful acts of individual officers, members, and agents.**

No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof.

Labor Management Relations Act, 1947.

29 U. S. C. 187, 61 Stat. 158: **Boycotts and other unlawful combinations; right to sue; jurisdiction; limitations; damages.**

(a) It shall be unlawful, for the purposes of this section only, in an industry or activity affecting commerce, for any labor organization to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is—

(1) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any

other producer, processor, or manufacturer, or to cease doing business with any other person;

(2) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 159 of this title;

(3) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 159 of this title;

(4) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class unless such employer is failing to conform to an order or certification of the National Labor Relations Board determining the bargaining representative for employees performing such work. Nothing contained in this subsection shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under sub-chapter II of this chapter.

(b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) of this section may sue therefor in any district court of the United States subject to the limitations and provisions of section 185 of this title without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.

29 U. S. C. 185, 61 Stat. 156 (c): **Suits by and against labor organizations—Venue, amount, and citizenship.**

* * * * * * *

(c) For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

29 U. S. C. 152, 61 Stat. 137: **Definitions.**

When used in this subchapter —

* * * * * * *

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless this subchapter explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act, as amended from time to time, or by any other person who is not an employer as herein defined.

FILE COPY

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1960.

No. 359.

UNITED MINE-WORKERS OF AMERICA, and UNITED MINE WORKERS OF AMERICA, DISTRICT 19,
Petitioners,

vs.

OSBORNE MINING COMPANY, INC.,
Respondent.

RESPONDENT'S BRIEF

In Reply to Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

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SUPREME COURT OF THE UNITED STATES.

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Respondent.

RESPONDENT'S BRIEF

In Reply to Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

STATEMENT OF THE CASE.

This case is much like United Mine Workers of America v. Meadow Creek Coal Company, 263 Fed. 2d 52 (Sixth Cir. 1959), cert. denied 359 U. S. 1013 (1959).

The Court of Appeals recited in its opinion (Petitioners' Appendix II, 97):

> "The facts of this case as found by the District Judge, present a frightening picture of violence and intimidation."

A reading of the findings of the District Court (Petitioners' Appendix I), demonstrates that this is a fair summation.

Respondent operated a strip mining business in coal fields in Whitley County, Kentucky, which county lies immediately north of Jellico, Tennessee. It subleased part of the lands, which respondent held under long-term leases, to sublessees who operated small drift mines in the seams of coal which were exposed by the stripping operations of the respondent. These sublessees hired their own employees. As stated by petitioners, there was no requirement that these sublessees sell their coal to the respondent. However, respondent offered the best market for the coal mined from these small mines and the coal from these mines was customarily sold to respondent (R. II 1149).

The coal mined by respondent's stripping operation was hauled by truck from the strip pits to respondent's railroad loading ramp in Jellico, Tennessee. This hauling was done by a number of trucks owned by various individuals other than the respondent, and for this service the truck owners were compensated by the payment of a certain amount for each ton of coal hauled. The truck owners employed and paid their own drivers to drive these trucks. The sublessees operating the small mines in some cases owned their own trucks, which they used to haul the coal into Jellico to the respondent's tipple, and in some cases they contracted for the use of trucks owned by others, and these other truck owners would employ their own drivers if they did not drive the trucks themselves.

There were many trucks driven by employees of truck owners who thus contracted for the use of their trucks in the hauling of coal from Osborne's stripping pit or from the sublessee mines. Many of these truck driver employees were driven from their jobs and quit the hauling of coal permanently by reason of the violent activities engaged in by the petitioners and many of the employees working in the sublessee mines likewise quit their jobs permanently because of the violence committed by the petitioners (R. I. 269, 275, 512-513, 524; R. II. 738, 745, 747, 754, 756, 761, 773, 1024-1025).

Petitioners find nothing to criticize with respect to the wages paid by respondent to its own employees who were, in large part, highly skilled operators of heavy earth-moving and coal-stripping equipment. But petitioners seek to belittle the wages paid by the sublessee coal mine operators to their employees (page 8 of Petition) and petitioners refer to a finding of the District Court as to the smallness of these wages.

Petitioners have dealt with this subject during the trial, in their argument in the Court of Appeals, and in their brief before this Court, but have never stated its relevance to any issue in this case. It appears that the only purpose is to prejudice the court against the respondent, a respectable coal company, and we think it in order to prevent any such result by discussion of the facts pertaining to this particular matter.

Petitioners put on two witnesses who operated separate sublessee mines and who testified without any records whatsoever at hand as to the amount realized from the mining and sale of the coal to respondent. The statements of these witnesses concerning the amount they thus realized was refuted categorically in respondent's rebuttal by checks issued by the respondent which showed the amount realized by these two small mines was considerably in

excess of that insinuated by these witnesses and was above that needed to pay the minimum wage required by the law. (R. III 1756-1760).

The respondent further proved that the Wage and Hour Division of the Department of Labor conducted a thorough investigation of the small mines of the sublessees for a period of some three or four months with respect to violations of the Walsh-Healey minimum wage and violations of the Fair Labor Standards Act. The result of this long investigation was a finding that these small mines were indebted to their employees in the amount of $1,330.00 under the Walsh-Healey minimum wage and nothing under Fair Labor Standards Act. Considering the fact that the Walsh-Healey minimum wage in the bituminous coal industry is more than twice that of any other industry, this is a very small sum considering the number of mines in operation and the number of employees involved (R. II 1149-1150, 1145-1146).

The total amount received by the workers in the sublessee mines depended upon the constancy of the operation. And so the amount of the income of these laborers was, throughout the period of the operation of this respondent, made less by the continued harrassment of the gangs of the petitioner and the dread and fear which they engendered. The character of equipment used can be traced to the same cause, for these were men without initial capital and expected to install improvements as they progressed, but of this they were deprived by the conduct of petitioners. Petitioners now seek to take advantage of the condition which this conduct brought about. It is stated in Petitioners' statement of the case that the sublessees produced only 3.9 tons per man per day. The State Mining Inspector for the State of Kentucky visited these mines and found them frequently not in operation (R. III 1737-1739). He testified that the state

figures from which petitioners drew their figure of 3.9 tons mined per man per day was based upon the maximum number of employees working full time. This mine inspector testified that, if the men actually worked full time, they would normally produce 7½ tons of coal per man per day (R. III 1740). So it is that the Petitioners seek to take advantage of their own misconduct in driving these laborers away from the mines by placing the blame of their claimed small total income upon respondent.

The three questions presented in the petition for certiorari are mixed questions of law and fact and, to avoid repetition, other factual matters relating to these three questions will be discussed in the following portions of the brief which are directed to the questions presented.

ARGUMENT.

I. The Truck Owners and the Sublessee Mine Operators Were Independent Contractors and Neutral Employers.—

As stated above in the statement of the case, there were numerous drivers employed by truck owners who hauled coal from respondent's strip pits and from the sublessee mines into Jellico and many of these drivers quit work by reason of the violence perpetrated by the petitioners. The findings of the District Court 48, 56, 57, 58, 59, 60, 61, 62, 64, 70, 76, 105, 106, 110, 111 show that the violence and threats of violence fell heaviest on the truck drivers.

The petitioners say that these employees were employed by various individuals who cannot be classified as "neutral" employers within the meaning of the cases which have dealt with secondary boycotts under Section 303 of the Taft-Hartley Act.

A. Respondent Had No Control Over the Secondary Employees.—

The truck owners paid their own expenses (A. I. 289, 350, 378, 405, 473, 507, 571; A. II. 764, 994). They maintained their trucks at a garage with which respondent had no connection (A. I. 575; A. II. 1023). It was at this garage that various acts of intimidation perpetrated by the petitioners occurred. The truck owners hired and paid their own employees (A. I. 264, 367, 368, 507, 522, 723, 571; A. II. 752, 764, 994) who were under no control of the respondent as found by the District Court in Findings numbers 25 and 108. Respondent left it up to each truck owner as to whether his truck would be used in the hauling on a particular day (A. I. 367, 379, 473, 523, 571; A. II. 994, 1026). There was no meddling or interference

by the respondent with the employment relationship between the drivers and the truck owners, or with respect to the manner in which the trucks would be driven or maintained. In fact, there is absolutely no proof in the record of any control exercised by the respondent over the truck driver employees.

B. **Teamsters v. N. L. R. B., 266 F. (2), 675, Is Distinguishable.—**

As in the Court of Appeals, petitioners rely on the case of Local 24, International Brotherhood of Teamsters v. NLRB, 266 Fed. 2d 675 (C. A. D. C. 1959). The Court of Appeals adequately and properly distinguished the last mentioned case (A. 105-106) pointing out that in the Teamsters Case the truck owners (lessors) were not actually the employers because the so-called employees of the truck owners were subject to a multiplicity of strands of control retained and exercised over the truck drivers by the transportation company (lessee). The Teamster case opinion shows that the reasoning of the Court was that there were so many strands of control exercised by the lessee over these drivers that there was no distinguishing characteristic separating the lessee's own employees from the truck drivers. This opinion deals, for several pages, with the great number of controls which the lessee exercised over these truck drivers. These strands of control covered the matters of hiring and firing of the drivers, their training and method of driving, and even the maintenance of the trucks. Under all legal conceptions of independent contractors, the situation that existed in the Teamsters case eliminated the truck owners from the classification of independent contractor.

Here the District Court expressly found in Findings Nos. 25 and 108 that the drivers were not controlled by respondent. These Findings were not even challenged in

the Court of Appeals, and that Court, as petitioners recognize in their petition here, also concluded that there is no control. The presence or absence of the factual strands of control is a factual question; that question has been settled by concurrent findings of both lower courts, and respondent submits that the Findings should be respected here. (Allen v. Trust Company of Georgia, 326 U. S. 630.)

C. Secondary Employees Were Not an "Integral Part" of Respondent's Operations.—

Petitioners turn to the unsupported argument that the fact that respondent and the truck drivers both secured benefits from the work afforded by respondent and performed by the truck drivers is sufficient to make the drivers an "integral part" of respondent's operations and that for this reason alone the independent contractor relationship must be ignored. As the Court of Appeals said (A. 105), the truck drivers did not haul exclusively for respondent but the truck owners used their trucks and drivers on other work. Petitioners place prime significance on the fact that some of the drivers hauled slate for roads over which the trucks hauled coal. Petitioners say that the truck owners were not paid for this work (Petition, page 9), but the proof brought out by petitioners themselves at the trial was that the truck owners were paid for this work and, in addition, trucks which never hauled coal were contracted for this work also (R. II, 1265-1266).

The only other factual matter which the petitioners bring forward to support their contention of the truck drivers being an "integral part" of respondent's operations is that respondent made payment of bonuses to the truck drivers hired by the truck owners, just as it paid bonuses to its own employees. These were payments which were made voluntarily by the respondent when it had a profitable year (R. II, 1223, 1224), and not by

reason of any employment contract between the respondent and the truck driver. We submit that this benevolent attitude of the respondent is just as much outside the scope of the issues in this case as is the petitioner's attempt to belittle respondent with respect to the wages paid to the sublessee mine employees.

D. Petitioners' Theory Is Contrary to the Statute.—

The theory advanced by petitioners under this question ignores the statutory law which was expressly designed to avoid the result sought by the petitioner. This question was argued out thoroughtly in the District Court, and the District Court recited in its Conclusions of Law (A. 89-90):

> "The truck owners and sub-lessee mine operators who employed the secondary employees were neutral employers and not allies. The truck haulers and sublessees were independent contractors and inducement or encouragement for concerted action against their employees was a secondary boycott. See 29 U. S. C. A., Section 152 (3), for definition of the term 'employee' which provides that an employee shall not include independent contractors. See House Report on Education and Labor to 80th Congress, 1st Session, which deals with independent contractors. House Reports, 80th Congress, 1st Session, Miscellaneous, Vol. 2, p. 18.
>
> "Prior to the amendment the National Labor Relations Board had held that truck haulers who hauled coal exclusively for one employer was considered an employee of that employer. See Matter of A. N. Green, 49 NLRB 146. Since the amendment the Board has held uniformly that persons who own trucks who haul exclusively for one employer but who hire and fire their own employees are considered independent contractors, thus their employees are considered see-

ondary employees under the Taft-Hartley Act. Robert F. Dwyer et al., dba Clackamas Logging Co., and Guy Keller, Freel C. Zink, an individual, Local 5-40, International Woodworkers of America, CIO, 113 NLRB No. 27, Case No. 36-RD-81, 7-21-55 (this case involved a truck hauler of logs); Roy O. Martin Lumber Co., Inc., International Woodworkers of America, CIO, 83 NLRB No. 107, Case No. 15-RC-79, 5-18-49; and Local No. 20, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (AFL-CIO) et al., and National Cement Products Co. of Toledo, Ohio, 115 NLRB No. 296, Case No. 8(CA)-37, 5-10-56 (this case involved a truck hauler of blocks)." (Conclusions of Law (6)).

The House Report on Education and Labor to the 80th Congress, 1st Session, referred to in the foregoing conclusion of the District Court reads as follows:

> "An 'employee', according to all standard dictionaries, according to the law as the courts have stated it, and according to the understanding of almost everyone, with the exception of members of the National Labor Relations Board, means someone who works for another for hire. But in the case of National Labor Relations Board v. Hearst Publications, Inc. (322 U. S. 111 (1944)), the Board expanded the definition of the term 'employee' beyond anything that it ever had included before, and the Supreme Court, relying upon the theoretic 'expertness' of the Board, upheld the Board. In this case the Board held independent merchants who bought newspapers from the publisher and hired people to sell them to be 'employees'. The people the merchants hired to sell the papers were 'employees' of the merchants, but holding the merchants to be 'employees' of the publisher of the papers was most far reaching. It

must be presumed that when Congress passed the Labor Act, it intended words it used to have the meanings that they had when Congress passed the act, not new meanings that, 9 years later, the Labor Board might think up. In the law, there always has been a difference, and a big difference, between 'employees' and 'independent contractors'. 'Employees' work for wages or salaries under direct supervision. 'Independent contractors' undertake to do a job for a price, decide how the work will be done, usually hire others to do the work, and depend for their income not upon wages, but upon the difference between what they pay for goods, materials, and labor and what they receive for the end result, that is, upon profits. It is inconceivable that Congress, when it passed the act, authorized the Board to give to every word in the act whatever meaning it wished. On the contrary, Congress intended then, and it intends now, that the Board give to words not far-fetched meanings but ordinary meanings. To correct what the Board has done, and what the Supreme Court, putting misplaced reliance upon the Board's expertness, has approved, the bill excludes 'independent contractors' from the definition of 'employee.'"

What we have said above applies equally to the relationship between respondent and the employees of the sublessee mine operators, as to which employees the District Court likewise found in Findings 25 and 108 the respondent exercised no control.

Accordingly, under this question, there is nothing in the Court of Appeals' opinion except a following of the law clearly expressed by Congress. There is no conflict between the Teamsters case and the decision of the Court of Appeals. Both cases are clearly right in applying the ordinary rules of independent contractor law.

We emphasize that even if this Court were to conclude that the concurrent findings of both lower Courts were in error, and to hold that the truckers were not independent contractors, there would still remain here a substantial federal claim under the federal statute, properly and in good faith alleged by respondent in the original complaint; the case would therefore still be an appropriate situation for the application of the pendent or ancillary jurisdiction doctrine, which petitioners challenge in their second question and to which we next reply.

II. The District Court and Court of Appeals Properly Applied the Doctrine of Pendent Jurisdiction.

A. The Courts Below Correctly Followed U. M. W. v. Meadow Creek Coal Co., 263 F. (2) 52, Cert. Den. 359 U. S. 1013.

With respect to the second question raised by the petition dealing with the application of the doctrine of pendent or ancillary jurisdiction by the District Court, sustained by the Court of Appeals, the two Courts below followed the decision in United Mine Workers of America v. Meadow Creek Coal Company, 263 Fed. 2d 52 (Sixth Cir., 1959), cert. denied 359 U. S. 1013 (1959).

The District Court found in Findings 109 and 110:

> (109) "The acts of violence and intimidation were intended to, and did, create a reign of terror in the Jellico area in order to promote the International's organizing campaign. Said acts and resulting reign of terror were intended to, and did, induce and encourage the employees of employers working for persons other than Osborne Mining Company both in mining and hauling of coal to the Osborne tipple to

engage in a concerted refusal in the course of their employment to mine and haul coal to said company and the objective thereof was to force Osborne Mining Company to bargain with the defendant International as the representative of its employees without said International having been certified as the bargaining representative of said employees.

(110) "Osborne Mining Company suffered substantial injuries as a result of said inducement and encouragement, but that part of their total injuries suffered caused by said inducement and encouragement cannot be separated from that part of the total injuries caused by primary acts of the defendants directly against Osborne Mining Company's own officials and employees."

The District Court made Conclusions of Law, 13, as follows:

"The material facts which support the Osborne Mining Company's secondary boycott action under 29 U. S. C. A. 187, also support its action under the common law.

"The secondary boycott claim and the common law claim based on the unlawful conspiracy are not separate causes of action but are simply different grounds to support a single cause of action, the cause of action accrues by reason of International's violation of the mining company's right to be free from wrongful interference in its business.

"The Court has jurisdiction of the secondary boycott claim based on the federal law and also the claim of unlawful conspiracy to injure the Osborne Mining Company's business under the doctrine of Hurn v. Oursler, 289 U. S. 238; UMW of A v. Meadow Creek Coal Co., Inc., supra, and United Construction Workers v. Laburnum Construction Corp., supra."

The Court of Appeals recited in its opinion (A. 106):

> "The case of United Mine Workers of America v. Meadow Creek Coal Co., 263 F. 2d 52 (C. A. 6, 1959), cert. denied 359 U. S. 1013 (1959), supports the jurisdiction of the District Court to consider and determine the common law claim where it is joined with the federal claim and is supported by the same evidence. Hurn v. Oursler, 289 U. S. 238 (1933). We are asked to reconsider our decision in Meadow Creek. We feel this case was correctly decided.' Judge Martin in his opinion said:
>
> '. . . We think this case presents only a single cause of action; that the claim of secondary boycott and unlawful conspiracy are not separate causes of action, but merely different grounds to support a single cause of action.'
>
> "The fact that the activities of U. M. W. were directed against both primary and secondary employers and employees does not oust the court of jurisdiction. The acts of the Unions were so interrelated that except in a very few instances it would be virtually impossible to separate those directed against a primary as distinguished from a secondary party."

B. The Violation of Federal Statute Was Not Unimportant in This Case; the Meadow Creek Case Did Not Create Important Litigation Burdens for Petitioners; Petitioners Have Had Litigation Problems as Long as Their History Has Been One of Violence.—

The petitioners say that the Meadow Creek decision was wrong. At this point the petitioners go off the record and they refer to twenty-five cases which have been brought against petitioners in the years 1959 and 1960. Respondent and its attorneys are not advised as to these cases and

have no connection with them. We cannot see how the fact that petitioners have seriously wronged so many other people can be of assistance to the petitioners in this case. Rather, these circumstances, if true, only serve to emphasize the horrible practices carried on by the petitioners — the massive gangs of men who seek to impose the will of the petitioners on men with which the members of these gangs have no connections and which terrorize whole areas making it necessary, as in the case at bar, for local communities to beg for help from state officials (Findings of the District Court 52 and 55). In the case at bar the State Police of two states were unable to cope with the situation (Finding of the District Court 59).

Petitioners state (Petition page 24) that "Practical considerations demonstrate that under the doctrine followed in the instant case, Section 303 is not important in a substantive way. However, it has effectively become a procedural device for entry into Federal Court". This statement is not borne out by the record. The District Court's Finding of Facts 48, 56, 57, 58, 59, 60, 61, 62, 64, 70, 76, 105, 106, 110 and 111 clearly show to the contrary that here the secondary employee truck drivers bore the major part of petitioners' attack. The trucks were vulnerable to attack, and this circumstance was seized upon by petitioners in their effort to stop the shipments of coal by respondent. Whether or not the same is true in the twenty-five extraneous cases listed by petitioners we are not fully advised.

Since the petitioners have gone off the record with respect to these extraneous law-suits we feel compelled, in answer to these assertions, likewise, to go off the record in the next three paragraphs, which need be considered only if the extraneous matters referred to by petitioners are considered appropriate.

We point out that the cases referred to were brought in 1959 and 1960 as a result of the campaign of the Union

to impose the last amendment to the National Bituminous Coal Wage Agreement—the one with the clause which expressly called for a boycotting of non-union coal. Our investigation reveals that violations of the National Labor Relations Act played an important part in the 1959-1960 strife, just as they did in the case at bar. Upon charges filed by many coal operators in eastern Kentucky and Tennessee, the National Labor Relations Board, after extensive investigation, issued a complaint against the United Mine Workers of America and its District 19 charging them with various forms of violence and coercive activities. In due course and pursuant to a petition filed in the United States Court of Appeals for the Sixth Circuit under Section 10 (e) of N. L. R. A., an order was entered requiring the union to cease and desist from various unfair labor practices characterized by violence. The National Labor Relations Board also used its extraordinary power, upon the petition of the Regional Director of its Tenth (Atlanta) Region, to obtain under Section 10 (j) a restraining order, entered April 30, 1959, in the United States District Court for the Eastern District of Kentucky enjoining the United Mine Workers of America from, among other things, "mass picketing, blocking roads or other installations, assaulting, stoning, clubbing, overturning or threatening to overturn equipment, threatening physical violence or other injury, using coercive or intimidatory language" (Rains v. United Mine Workers of America et al., Civil No. London 985). Several of the United Mine Workers of America officials and representatives were later before the District Court on criminal contempt charges. A similar restraining order was also issued upon the petition of the Regional Director of the Ninth (Cincinnati) Region, enjoining, in addition to acts of violence, secondary boycott activities prohibited by Section 8 (b) (4) (A) and (4) (B) of the N. L. R. A. (Getreu v. UMWA et al., Civil No. Jackson 280). This period of violence arose after the decision

in the Court of Appeals in the Meadow Creek case, and it continued on after this Court denied certiorari in the Meadow Creek case. Regardless of the Meadow Creek decision, this Union will have lawsuits as long as it resorts to violence or other law violations.

The foregoing is apparent from the history of this Union. The Report of the Legal Department, United Mine Workers of America, to the Union's convention of 1952 is set forth on pages 25-254 of the printed minutes of that convention, and this report states in part:

> "Since the 1948 Convention, your Legal Department has handled hundreds of cases of various types and kinds arising under the Taft-Hartley Act, and has been successful in defeating many of these actions brought against the Union and its members. In many instances the Operators have been forced to dismiss many of their cases, and in some instances some cases have been disposed of by compromise and settlement agreements.
>
> "During the negotiations of the 1948 and 1950 National Agreements, the union forced the Operators to dismiss injunction and damage actions pending in the Federal and state courts with potential liabilities of approximately $16,000,000. During 1951 and 1952 the Operators brought in their own names or encouraged others to bring damage actions with a potential liability of approximately $43,000,000."

The Legal Department reported to the 1956 convention, in part, as follows:

> "Since the last convention, 32 cases have been filed under the provisions of the Taft-Hartley Act against your International Union seeking damages in the total amount of $21,786,484.02. Twenty-six cases have been disposed of by trial, settlement and dismissal. Six

cases are now pending, seeking damages in the amount of $10,303,017.00."

(1956 Convention Minutes, page 269.)

"Since the last report to you four years ago the fight to maintain the legal rights of our organization and to protect its members has been an ever continuing one. No district of our union has escaped the scourge or effects of the Taft-Hartley Act. Employers have utilized its provisions to prosecute in the criminal courts, as a basis for injunctions by courts of equity in labor disputes, and to sue for damages in tremendous amounts. Defending our organization and its members from those onslaughts has involved tremendous expense including attorneys' fees, court costs, expense of trials and other items necessary to preparation and defense in court. These expenses have risen to unusually large proportions. There is every reason to believe by past experience that only repeal of the Taft-Hartley Act can bring substantial relief from the flood of pending and anticipated litigations and attendant enormously increased costs involved. Despite these tremendous legal problems your Legal Department feels that under the leadership of President Lewis and his associate International Officers **your union is stronger today than at any time in its history.**" (Emphasis ours.)

(1956 Convention Minutes, pages 272-273.)

It would seem that this Union thrives on litigation and the reason is apparent from the record in this case.

The broad scope of the wrongs done by these petitioners should not save them from the application of the ordinary rules of law to which more law abiding citizens are subject.

C. The Patton [211 F. (2) 742], Apex (310 U. S. 469) and Crumboch (325 U. S. 821) Decisions Are Distinguishable.—

In final analysis, the position of the petitioners is that the case of Hurn v. Oursler, 289 U. S. 238 (1933) and the doctrine of pendent or ancillary jurisdiction must be ignored. They point to United Mine Workers of America v. Patton, 211 Fed. 2d 742 (Fourth Cir. 1954) and Apex Hosiery Company v. Leader, 310 U. S. 469 (1940) and Hunt v. Crumboch, 325 U. S. 821 (1945), and state that these decisions are in conflict with the rule in the Meadow Creek case.

Congress has never manifested an intent that the ordinary rule of pendent or ancillary jurisdiction shall not apply to the cause of action afforded by Section 303 of the Taft-Hartley Act, **when that doctrine is properly asserted in the pleadings in the cause and there is a sufficiently strong federal case to fit the rule.**

In the Apex and Crumboch cases the doctrine of Hurn v. Oursler on pendent or ancillary jurisdiction was never asserted by the plaintiff. Furthermore, the facts presented in the complaints did not present even colorable federal claims, an essential element to the application of the doctrine of pendent jurisdiction. In this respect, the decisions in Apex and Crumboch are like the decision in the case of Love and Amos, which was decided concurrently with the case at bar by the Court of Appeals, wherein the Court of Appeals held that the claim of the sales agency for damages resulting from the destruction of the business of respondent was not a proper claim to assert under the Federal Statute prohibiting secondary boycott and, accordingly, there was no colorable federal cause of action and the Court of Appeals dismissed that case (A. 116). In the Apex and Crumboch cases the same decision would have

been reached even if the doctrine of pendent jurisdiction had been asserted by the plaintiff.

In the Patton case the Court of Appeals did not once refer to the doctrine of pendent jurisdiction or the case of Hurn v. Oursler. The wrongs done were completely encompassed in the remedy afforded by the Federal Statute.

The facts in the case at bar as found by the District Court demonstrate that petitioners ran roughshod over federal law and state law with equal abandon, leaving behind wreckage which they now seek to have the Court microscopically to sift to determine that portion attributable to violation of state law and that attributable to federal law. The District Court found that this would be an impossible task (Finding 110). Is there no relief, then, under the Federal Statute the violation of which has been so thoroughly demonstrated in this case? The law is settled. The party wronged, on asserting pendent jurisdiction in a colorable federal claim, is entitled to full relief and if that party cannot obtain the full relief under the Federal Statute, he is entitled to recover under the state law founded upon the same cause of action as the federal remedy.

D. The Meadow Creek Case Is Supported by a Long Line of Cases Following Hurn v. Oursler (289 U. S. 238).

The Meadow Creek decision was preceded by a long line of cases. These cases had their origin in Siler v. L. & N. Ry. Co., 213 U. S. 175 (1909) and Hurn v. Oursler, 289 U. S. 238 (1933).

The doctrine has been applied in cases involving a claim in the field of federal patent or trademark law with an accompanying state unfair competition claim in such cases as Hurn v. Oursler, supra; Armstrong Paint and Varnish Works v. Nu-Enamel Corp., 305 U. S. 315 (1939);

in re Amtorg Trading Corp., 75 Fed. 2d 826 (Ct. of Patent Appe., 1935); Edelman & Co. v. AAA Specialty Company, 88 Fed. 2d 852 (7th Cir., 1937); Sinko v. Snow Craggs Corporation, 105 Fed. 2d 450 (7th Cir., 1939); Maternality Yours v. Your Maternity Shop, 234 Fed. 2d 538 (2nd Cir., 1956).

The doctrine has been applied under the Jones Act wherein claims are combined for unseaworthiness and maintenance and cure with an admiralty claim in such cases as Jordine v. Walling, 185 Fed. 2d 662 (3rd Cir., 1950); Troupe v. Transit Company, 234 Fed. 2d 253 (2nd Cir., 1956); Doucette v. Vincent, 194 Fed. 2d 834 (1st Cir., 1952).

The doctrine has been applied in cases wherein claims under the Federal Transportation Acts are combined with claims under the state or common law in such cases as Southern Pacific Company v. Van Hoosar, 72 Fed. 2d 903 (9th Cir. 1934); Strachman v. Palmer, 177 Fed. 2d. 427 (1st Cir., 1949); Chicago Great Western Railway Co. v. Chicago, Burlington and Quincy Railway Co., 193 Fed. 2d 975 (8th Cir., 1952).

The doctrine has been applied in cases wherein a claim under the Federal Securities and Exchange Act is combined with a state or common law claim for fraud in such cases as Errion v. Connell, 236 Fed. 2d 447 (9th Cir., 1956); Jung v. K. & D. Mining Co., 260 Fed. 2d 697 (7th Cir., 1958).

The doctrine has been applied in cases wherein claims under the Sherman and Clayton Acts are combined with claims under the state law or common law dealing with monopoly or trusts in such cases as Southside Theatres v. United West Coast Theatres Corporation, 178 Fed. 2d 648 (9th Cir., 1949); Braddick v. Federation of Shorthand Reporters, 115 Fed. Supp. 550 (S. D. N. Y., 1953).

The doctrine has been applied in cases wherein claims under the Fair Labor Standards Act are combined with

claims for compensation outside of said acts in such cases as Manosky v. Bethlehem Hingham Shipyard, 177 Fed. 2d 529 (1st Cir., 1949); Hogue v. National Automatic Parts Association, 87 Fed. Supp. 816 (E. D. Mich., 1949); Wertanen et al. v. Weldnetion Corporation, 151 Fed. Supp. 440 (E. D. Mich., 1957).

The doctrine has been applied in cases wherein claims under statutes relating to national banks are combined with claims under the state or common law in such cases as Gulley v. First National Bank of Meridian, 81 Fed. 2d 502 (5th Cir., 1936).

The doctrine has been applied in cases wherein a claim complying with the diversity of citizenship and jurisdictional amount requirements is combined with a claim which does not comply with such requirements in such cases as American Fidelity & Casualty Company v. Owensboro Milling Company, 222 Fed. 2d 102 (6th Cir., 1955).

The foregoing cases, in these many different areas, discuss the doctrine of pendent jurisdiction as a rule of justice, convenience, common sense, economy and practicality. As an example, in Errion v. Connell, 236 Fed. 2d 447, the Court stated:

> "It is alleged in the complaint in our case, and the trial Court found, a single case of action involving a single fraudulent scheme to defraud Mrs. Connell of her property. There were involved two types of property, one being securities over which the Federal Court had jurisdiction, and the other non-securities over which the Federal Court normally has no jurisdiction. But the single fraudulent scheme arising out of the same set of facts encompassed both types of property. The thought of requiring two lawsuits in this situation is untenable. We, therefore, hold that the trial court could correctly award damages for the entire fraudu-

lent scheme, even though non-securities were involved."

The Taft-Hartley Act has afforded a remedy in the Federal Court for the damages done by an illegal secondary boycott. Where the defendant has wantonly and recklessly violated the rights of the plaintiff under this Federal Statute, as well as under the common law, in such a manner that it is impossible to segregate the damages from the two types of violations and give relief under the Federal Statute, as is true under the Findings of the District Court in this case, we submit that such is the clearest case requiring the application of the doctrine of pendent jurisdiction, the rule of justice, convenience, common sense, economy and practicality. Any other rule would put a premium upon, and encourage, the kind of conduct which the Court of Appeals had characterized as a "frightening picture of violence and intimidation."

III. Petitioners Are Responsible for All of the Acts of Intimidation and Coercion in the Record.

A. The International Union's Responsibility for the Acts of the District Union's Representatives Is Not Questioned.

In the third question raised in the petition, petitioners question the liability of petitioners for certain activities which occurred in the period of the case.

In the Court of Appeals the petitioners raised the question as to the responsibility of the International Union for the Acts of District 19. A large part of the proof in the trial of the case related to the relationship of District 19 to the International Union and the Court made findings with respect to this relationship in Finding No. 97. The Court found that the District was merely an arm of the International and was not a separate autonomous body, but

was completely subservient to the International; that District's independence was terminated in order that the International gain greater control over the District organizers. The Court further found that the International was carrying on a campaign at the International level that was in part directly responsible for the violence in the vicinity of respondent's operations (Findings 99 and 100). The District Court found that the organizers of District 19 working in the vicinity of respondent's operations were furthering the organizational efforts and interests of the International Union in Findings 94 and 95. The petitioners do not challenge these findings in the petition before this Court.

B. The Entire Record Shows a Pattern of Violence, Intimidation and Coercion Stirred Up by District Union Representatives as Well as by the International Itself.

Many of the other findings of the District Court show the relationship of the organizers of the Union to the many violent acts and threats of violence that occurred. The petitioners do not challenge all of these findings, but only pick out a small part of them and state that the representatives of the Union were not shown to be involved in these specific acts.

The same approach was made in the appeal by the petitioners in the Court of Appeals under question number 6 raised in that Court. The approach is to challenge only the connection of the Union to a few isolated incidents, taking the specific findings with respect to these incidents out of the context of the District Court's over-all findings.

This is an unrealistic and misleading approach. Only the entire record reveals a pattern of operation and many of the activities not mentioned by the petitioners show the relationship of the union organizers and union officers to the whole scheme of atrocities.

This can be well demonstrated by looking to the findings of the District Court. Finding of Fact 95 is to the effect that the organizers Daniel and Maddox were engaged in the organizational interests and objectives of the International Union and that in accomplishing these objectives the organizers frequently resorted to the use of caravans of cars containing the gangs such as those which manifested themselves so many times in the vicinity of respondent's operations. The organizer Clouts showed that it was a customary practice of the organizers of this union to bring these gangs of men to the mines upon which pressure was to be brought to bear (R. III 1311).

The witness Thomason, President of District 19, testified that these organizers were not specifically told what to do, that they were competent men, that they knew what to do, and it was not necessary to talk to these organizers and detail their activities (R. III 1323).

There can be no doubt that the officers and organizers of District 19 were constantly at hand and were in the thick of the activities which destroyed the respondent. At the very outset, in the mob which took over the premises of respondent's tipple in July, 1954, the two district field representatives were at hand to speak for the mob, and the Court found that they did nothing to disperse the mob, but rather that they made remarks calculated to arouse the fury of the men. The District Court's Finding of Fact shows how closely related to this incident were the incidents involving the issuance of bogus warrants for the arrest of the truck drivers, and that the accuser who swore to these warrants stated on the witness stand that the Deputy Sheriff, the Union Member involved in the mob of July, 1954, and who was made a defendant in the injunction case after the mob, was the one who procured the swearing out of the warrants. The Court found that there was no justification for this misuse of

the processes of the law. These warrants were addressed against those truck drivers who sought the protection of the injunction after the immediately preceding mob action led by the field representatives of the Union. The gangs of men which filled the streets around the tipple at respondent's premises were visited constantly by these field representatives. The responsibility of the organizers of the Union for the mob which descended on the City of Jellico and took over completely that city on April 7, 1955, administering beatings to truck drivers and other humiliations, and dumped coal over the streets of Jellico, is shown by the conferences which the District representatives had with the members of this mob. This was the same mob which proceeded from the tipple to two other mines and caused beatings to be administered to a number of men, including a severe thrashing to a man sixty five (65) years of age. The field representative of the Union was seen talking to the members of this mob and, in fact, preceded them back into Jellico at the conclusion of the day's activities. This agent's attempt at a weak alibi at the trial was disproved by a disinterested witness. One of the mines in which the beatings occurred sent for the field representative and asked to sign up with the Union and thereafter this mine was not molested. Theretofore the field representative had been to that mine to obtain a contract but was refused.

The mob of April 11, 1959, first visited the Phillips mine and closed it down and the District Secretary and Treasurer and the field representative of the District told Phillips it was because his men had not joined the Union and if they did join he would not have any more trouble. The men did then join and the mine reopened. This same mob proceeded to the Van Huss mine and committed some of the worst atrocities in this record.

The connection between the Union and the other gangs of men which paraded through Jellico and sought to ter-

rorize the municipal officials who had protested against the mob activities was shown by the testimony of a member of that crew.

The district officers and members held a meeting in Jellico and the district officers urged the members of the Union to keep the coal out of Jellico and stated if the men got into trouble the Union would be behind them. A criminal case was later brought against some of the members because of mob depredations and $10,000.00 of the International Union's funds were sent to the District as "organizing expenses" just before the District paid $10,000.00 as attorneys' fees to the lawyers who represented the members of the mob in the criminal case.

The connection of the Union representatives with efforts to harrass the truck drivers at the service station where they kept their trucks, by caravans of cars and by gangs on the sidewalk, is shown by the presence of the District organizers giving instructions to these men before the start of the demonstration and the supervision of the representatives as the demonstration was taking place.

In January, 1956, the District Secretary-Treasurer gleefully took credit for the Union for the fact that the respondent had been driven from Jellico.

After the respondent had been driven from the property a new company came in and took over the coal land and the respondent's tipple and the Union secured a contract from this new company which gave the International Union the benefits for which it had so determinedly worked. All the while the International's organizing campaign, supervised by the International's organizing committee, was going on and the International Union in its official journal was publishing tirades against such suppliers of T. V. A. coal as the respondent.

The traditional practices of the Union in stirring up gangs and caravans of cars to descend upon the mines is

still being carried on is revealed by the twenty-five cases recently brought in 1959-1960 to which petitioners refer under the second question in this petition.

In its Conclusion of Law Number 3, the Court found that the organizers of the Union were agents of the defendant International acting within the scope of their employment and in accordance with customs and practices within the Union.

In the light of the specific instructions given by District officers and agents, the organizing campaign going on under the International Campaign Committee, the tirades directed at such suppliers of coal as respondent in the official journal of the International, the use of the customary practices of the Union, in engaging gangs and mobs, and the benefits secured by reason of the mob activities in the form of new members and new contracts signifying the ratification of the conduct of the mobs, it is submitted that the rules set forth in United Brotherhood of Carpenters and Joiners of America v. U. S., 330 U. S. 395 (1947); U. M. W. v. Meadow Creek Coal Company, Inc., 263 Fed. 2d 52 (1959), cert. denied 359 U. S. 1013 (1959); U. M. W. v. Patton, 211 Fed. 2d 742 (4th Cir. 1954), and Clayeraft v. U. M. W., 204 Fed. 2d 600 (6th Cir. 1953), render the decision of the District Court and the Court of Appeals clearly correct with respect to this issue.

CONCLUSION.

This case took over three weeks to try in the District Court. The printed transcript of testimony comprises over 1,760 pages. The District Court adopted 124 findings of fact and 14 conclusions of law. The thoroughness of the District Court's consideration in this case is revealed in its findings and conclusion. The Court of Appeals has given thorough consideration to the questions raised in this petition. There is close similarity between this case

and the case of United Mine Workers of America v. Meadow Creek Coal Company, supra, as to which this Court denied certiorari in June, 1959. The justness of the decision of the District Court and the Court of Appeals is manifest from the record. The decision of the Court of Appeals is not in conflict with any case from other circuits, but is entirely consistent with the decisions referred to by the petitioners, and the application of the doctrine of pendent jurisdiction in this case is called for by the rule of reason, economy, common sense, convenience and justice. The fact that the Union has continued its outrages and has gotten itself involved in other lawsuits is no justification for depriving the respondent of its rights under sound principles of law. The Union's other involvements are of no concern here. The only question is whether any valid reason has been presented requiring the granting of the writ. There is none, and accordingly, respondent prays that the petition for writ of certiorari be denied.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1960.

No. 359.

UNITED MINE WORKERS OF AMERICA and UNITED MINE WORKERS OF AMERICA, DISTRICT 19,
Petitioners,
vs.
OSBORNE MINING COMPANY, INC.,
Respondent.

PETITIONERS' REPLY TO RESPONDENT'S BRIEF.

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J. G. Ray & Sons Co. v. NLRB, 251 F. 2d 771 (1st Cir., 1958) 4

Local 24, International Brotherhood of Teamsters v. NLRB, 266 F. 2d 675 (C. A. D. C., 1959) 4

Lustig v. United States, 338 U. S. 74, 77 3

Matter of A. M. Greene, 49 N. L. R. B. 146 2

NLRB v. Business Mach. and Office Appliance Mechanics Conference Board, Local 459, 228 F. 2d 553 (2d Cir., 1955) 4

NLRB v. Hearst Publication, Inc., 322 U. S. 111 (1944) 3

Offutt v. United States, 348 U. S. 11, 15 3

United Mine Workers of America v. Coronado Coal Co., 259 U. S. 344 7

United Mine Workers of America v. Meadow Creek Coal Co., 263 F. 2d 52 (6th Cir., 1959), cert. denied 359 U. S. 1013 (1959) 6, 7

United Mine Workers of America v. Patton, 211 F. 2d 742 (4th Cir., 1954) 6, 8

United States v. Standard Oil Company, 332 U. S. 301 5

United States v. United States Gypsum Co., 333 U. S. 364, 394 3

Statutes Cited.

29 U. S. C., Sec. 187 ..... 1, 2, 3, 4, 6

41 U. S. C., Sec. 35 et seq. 2

Textbook Cited.

Law and the National Labor Policy, by Archibald Cox, Institute of Industrial Relations, University of California, Los Angeles, 1960, page 35 4

Miscellaneous Cited.

House Report on Education and Labor, 80th Congress, 1st Session, Miscellaneous, Vol. 2, p. 18 3

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1960.

No. 359.

UNITED MINE WORKERS OF AMERICA and UNITED MINE WORKERS OF AMERICA, DISTRICT 19,
Petitioners,

vs.

OSBORNE MINING COMPANY, INC.,
Respondent.

PETITIONERS' REPLY TO RESPONDENT'S BRIEF.

Petitioners will not attempt to reply, seriatim, to Osborne's[1] arguments opposing the petition for certiorari, since petitioners believe that answers thereto are contained in the petition. Petitioners further believe, however, that a reply to the following matters will be helpful to the Court.

I.

1. The Conditions of Work Obtaining in the Mines Operated by Osborne's Sublessees Are a Relevant Part of the Factual Basis for the Determination of Whether the Sublessees Were Neutral or Secondary Employers Under Section 303 (29 U. S. C., Sec. 187).

On page 3 in the Osborne brief it is said that petitioners have referred to the working condi ions in the sublessee

[1] The respondent, Osborne Mining Company, Inc., is sometimes referred to herein as "Osborne."

mines to prejudice this Court against Osborne, and that petitioners have not stated the relevance of the subject to any issue in the case.

This subject is germane to the issue of whether the sublessees were neutral employers under Section 303. As stated in the petition (p. 16), "elemental economic circumstances plainly indicate" the dependence of the sublessees and their employees on Osborne. These circumstances, which gave Osborne practical control over sublessees as in **Matter of A. M. Greene**, 49 N. L. R. B. 146, are found in the control it had over the area's large mining tracts, in its ability to create small areas for sublessee mines as it strip mined the outcrop coal by its own employees, in the size of the subleased tracts which precluded other than a 3 to 6 man "punch mine" or "dog hole" type non-mechanical operation, and in the price it paid for coal (R. I, 95-96, 116; R. II, 680-681; R. III, 1535). According to Osborne's engineer the workers in these mines produced five or six tons of coal per man "on a normal day" (R. II, 681). Kentucky Department of Mines indicates the average is 3.96 tons (R. III, 1584). In either event, estimating a net of about $1.50 per ton to the sublessee (R. III, 1586; R. III, 1809), the indicated daily wage of sublessee's coal miner[2] was far less than the $2.245 hourly rate found by the Secretary of Labor under the Walsh-Healey Act (41 U. S. C., Sec. 35, et seq.) to be the prevailing wage in the area in November, 1955 (R. III, 1686; 20 F. R. 5690). No one can seriously insist that sublessees of this type, and their employees, were not totally dependent upon Osborne or that they were not a part of a unified effort by Osborne to mine coal for the fulfillment of its contracts.

Petitioners thus emphatically deny that they have referred to this subject merely to prejudice the respondent.

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[2] See cross-examination of Osborne's witness, Henry Baker (R. II, 743-745).

2. No Significance Should Attach to the Concurrence of the Courts Below in Finding That the Sublessees and Truckers Were Neutral Employers.

On page 8 of its brief Osborne states that the "presence or absence of the factual strands of control is a factual question" and that the "question has been settled by concurrent findings of both lower courts."

Petitioners contend that the concurrence of the lower courts on the question indicated is of no significance on the issue of whether the sublessees and truckers were neutral employers under Section 303. This issue is not simply an issue to be determined by factual findings on questions of control. It is one in which an "issue of law [is] entwined"—the issue of whether and to what extent an independent contractor may not be a neutral in the dispute of another. As such, review of the issue is not foreclosed by the concurrent finding. **Lustig v. United States**, 338 U. S. 74, 77; see also **Offutt v. United States**, 348 U. S. 11, 15; **United States v. United States Gypsum Co.**, 333 U. S. 364, 394.

3. Petitioners' Theory Regarding the Sublessees and the Truckers Is Not Contrary to Law.

Because of the change made by the Taft-Hartley Act in the definition of the term "employee" the respondent argues that petitioners' theory is contrary to law.

As a frequently quoted House Report[3] makes clear, the purpose of the change was to overrule the decision of this Court in **NLRB v. Hearst Publication, Inc.**, 322 U. S. 111 (1944). The change in the law, however, was not con-

[3] House Report on Education and Labor to 80th Congress, 1st Session, Miscellaneous, Vol. 2, p. 18. The material language of the report is set forth on pages 10-11 of the respondent's brief.

cerned with the question of whether an independent contractor was, by virtue of that status, a neutral employer to all other independent contractors.

The Court of Appeals' interpretation of Section 303, as pointed out in the petition at pages 16-17, was never intended by Congress. The Act's chief sponsor during the Congressional debate said that an employer acting "as a part of the primary employer" is not a neutral employer (see petition, footnotes 14 and 15, page 16). Moreover, the courts have not accorded a literal meaning to Section 303. Recently Mr. Archibald Cox aptly observed that, "The neutrality of the secondary employer varies within such wide limits that the courts have already read two exceptions into the statute . . .":[4] (1) the so-called "ally" rule under which an employer who accepts work from a strike-bound employer is not considered a neutral employer with regard to the dispute;[5] and (2) the affiliate rule under which wholly owned subsidiaries have not been regarded as disinterested neutrals.[6]

Justice demanded that a literal interpretation of the statute not be made in the two situations noted by Mr. Cox just as it demanded that such an interpretation not be made in **Local 24, International Brotherhood of Teamsters v. NLRB**, 266 F. 2d 675 (C. A. D. C., 1959), where it was found that one of two operationally-integrated businesses was not so unconcerned with the dispute of the other as to be "statutorily shielded as a neutral" in the dispute.

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[4] *Law and the National Labor Policy*, by Archibald Cox. Institute of Industrial Relations, University of California, Los Angeles, 1960, page 35.

[5] *NLRB v. Business Mach. and Office Appliance Mechanics Conference Board, Local 459*, 228 F. 2d 553 (2d Cir., 1955).

[6] *J. G. Ray & Sons Co. v. NLRB*, 251 F. 2d 771 (1st Cir., 1958).

Thus it is clear that the contention of petitioners regarding the sublessees and the truckers is not contrary to law but that it is akin to decisions in which courts have rejected a literal interpretation of the Act where justice so required.

II.

1. The Petitioners Properly Referred to Other Cases in Which the Question of Ancillary or Pendent Jurisdiction Here Before the Court Is Also Involved.

Osborne criticizes (brief, page 15) petitioners for having set forth in their petition the list of pending cases against UMW in which the question of ancillary or pendent jurisdiction is necessarily involved.

The reference to these other cases is proper and, moreover, it is helpful to the Court. It accords with the grant of certiorari in **United States v. Standard Oil Company**, 332 U. S. 301, where this Court said that the grant had been prompted by the importance of the case as reflected in the Government's assertion, in its petition for certiorari, that the case was representative of a number of pending and prospective suits.[7] See also **Brown v. Board of Education of Topeka**, 344 U. S. 1, where this Court took "judicial notice" of a case pending before the United States Court of Appeals for the District of Columbia in which a question was posed similar to a question in three other cases then pending on certiorari.

On pages 16 through 18 of its brief the respondent has undertaken in a discussion of matters admittedly off the record to explain the situation which gave rise to the list

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[7] *United States v. Standard Oil Company*, 332 U. S. 301, 302, footnote 2.

of pending cases referred to in the petition. This discussion affords no basis upon which the erroneous application of a jurisdictional doctrine may be justified and inasmuch as such matters are not factually germane to any issue presented by this petition, we deem it unnecessary to discuss them.

2. Judicial Authority Does Not Sustain the Assertion of Federal Jurisdiction Over a State Cause of Action Joined With an Action Under Section 303.

Respondent argues (brief, page 20) that numerous cases sustain the Sixth Circuit's application of the doctrine of pendent jurisdiction in the instant case and (brief, page 19) that the **Apex,**[8] **Crumboch**[9] and **Patton**[10] decisions are all distinguishable in that there was no assertion of the doctrine of pendent jurisdiction by the respective plaintiffs therein.

It must be noted, in answer to this argument, that in none of the cases cited by respondent, other than **Meadow Creek,**[11] has the doctrine of pendent jurisdiction been applied for the purpose of asserting jurisdiction over an alleged state cause joined with an action under Section 303. This is of much significance because at the time of enactment of Section 303 Congress intentionally withheld from the Federal Courts jurisdiction over the very issues upon which, in its common law aspects, the present case was decided. See petition, pages 24-25.

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[8] *Apex Hosiery Co. v. Leader*, 310 U. S. 469 (1940).

[9] *Hunt v. Crumboch*, 325 U. S. 821 (1945).

[10] *United Mine Workers of America v. Patton*, 211 F. 2d 742 (4th Cir., 1954).

[11] *United Mine Workers of America v. Meadow Creek Coal Co.*, 263 F. 2d 52 (6th Cir., 1959), cert. denied 359 U. S. 1013 (1959).

Unless this Court reviews and reverses the pattern now established and followed by the Sixth Circuit in **Meadow Creek** and the present case, Congressional will and intention, clearly manifested in its refusal to make actionable in Federal Courts suits based upon acts of interference other than those within Section 303, will be totally thwarted and Federal jurisdiction of state causes of action in labor controversies will have been established, not by Congressional enactment, but through the process of judicial legislation.

Respondent's contention (brief, pafe 19), that **Apex** is distinguishable from the present case because no discussion is had in that opinion of the pendent jurisdiction doctrine, overlooks the positive denial therein by this Court of the authority of Federal Courts, under circumstances comparable to those of the case at bar, to enforce state laws. This language cannot be explained away in terms of a litigant's failure to assert the pendent jurisdiction doctrine. The fundamental power of the Federal judiciary is not as gossamer as respondent's suggestion implies.

Also without merit is respondent's argument that **Apex** is distinguishable from the instant case on the basis that **Apex** asserted no "colorable" Federal claim for decision, and accordingly the doctrine of pendent jurisdiction could not have been applied therein. **Apex**, however, was in its time and is today regarded as a milestone in a line of difficult cases involving the application of the Sherman Act to the activities of organized labor. When it is considered that actions of labor similar in an objective sense to those involved in **Apex** had been held, prior to **Apex**, to be violative of the Sherman Act (See **United Mine Workers of America v. Coronado Coal Co.**, 259 U. S. 344, the first **Coronado** case), the contention that there was no "colorable" Federal cause involved in **Apex** is fallacious.

Respondent's argument that **Patton** (211 F. 2d 742) did not involve the doctrine of pendent jurisdiction is not in accord with published reports of the opinion of the District Court (114 F. Supp. 596) and the Court of Appeals therein, both of which decisions are discussed on pages 29 and 30 of our petition.

III.

1. A Finding That Petitioners Were Responsible for Certain Acts Which Occurred During the Dispute Does Not Justify the Conclusion That Petitioners Had "Inspired" and Were Therefore Responsible for Other Acts.

In response to petitioners' third ground for granting certiorari the respondent, without discussing the particular matters referred to by petitioners, says that the "entire record" supports the conclusion of liability reached by the District Court and the Court of Appeals. The respondent further states (brief, page 24) that petitioners have not challenged all of the findings, but only "the connection of the Union to a few isolated incidents" taken "out of the context of the District Court's over-all findings."

It is quite true that petitioners do not seek review of the vast body of facts in this case. Petitioners insist only that the lower courts erred in certain of the material conclusions wherein it is found that petitioners had "inspired" certain acts and were responsible therefor. Liability of anyone under any set of circumstances surely must be predicated on something more substantial than this extraordinary imputation.

Petitioners say that the standard of responsibility adopted by the District Court and approved by the Court of Appeals is indefensible. The rule indicated is of great

importance in the administration of justice as it relates to the role of organized labor in this country and requires review by certiorari of the case.

Respectfully submitted,

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